Supreme Court of the United States

OCTOBER TERM, 1912

No. 787

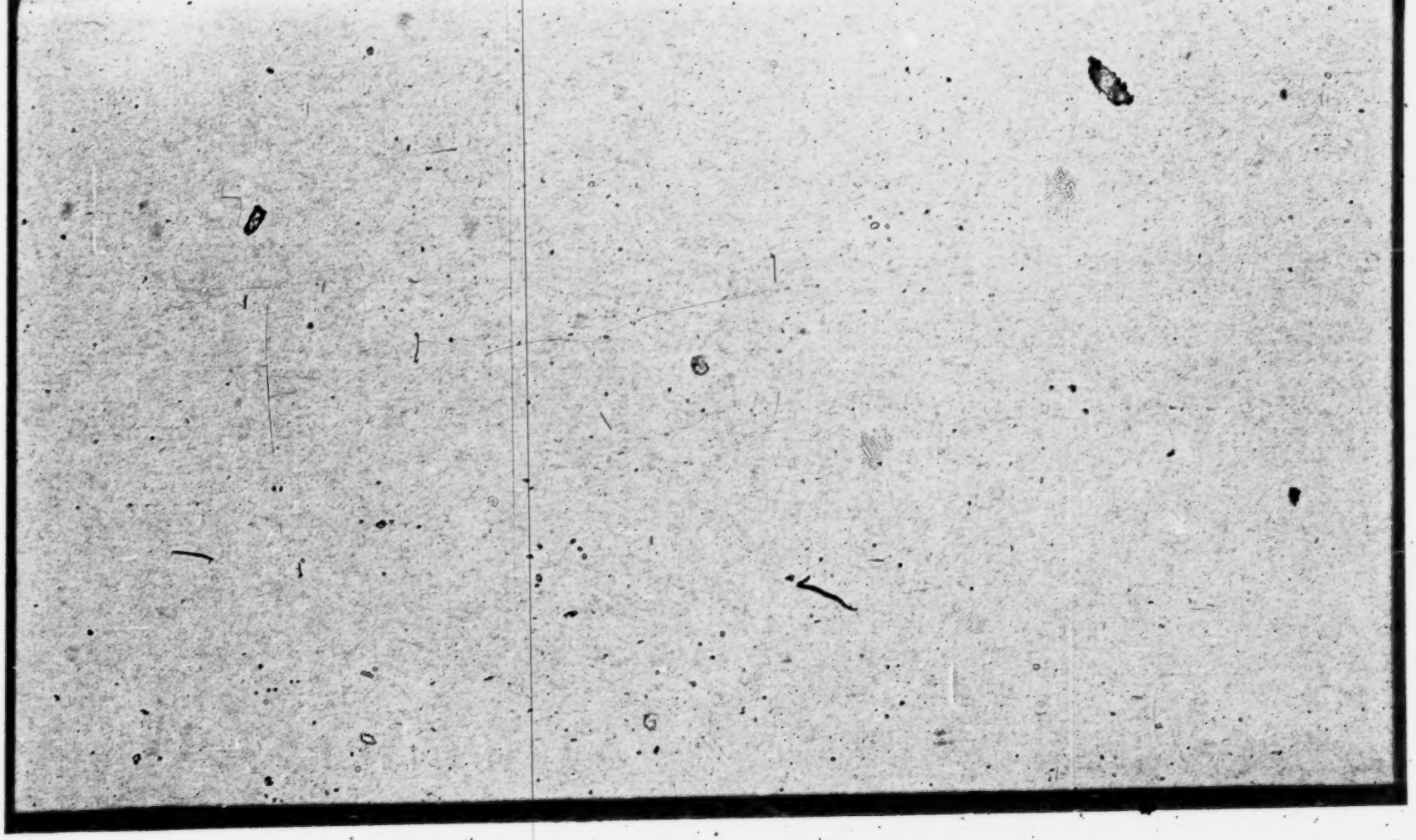
ILLINOIS COMMERCE COMMISSION, PUBLIC SERVICE COMMISSION (OF INDIANA), BOARD OF TRADE OF THE CITY OF CHICAGO, AND ACME STEEL COMPANY, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, THE ALTON RAILROAD COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED FEBRUARY 14, 1913.



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Mr. Walter: Your Honor, in order to avoid bringing two witnesses here who desire to have their situations spread on the record, counsel for respondents has very courteously permitted me to offer as Exhibit 65, a statement on behalf of the Gary Screw & Bolt Co., and, Exhibit 66, a statement on behalf of the Union Drawn Steel Co., setting forth what they would testify to if they were here in person.

Chairman Campbell: All right, if there is no objection, that may be done.

Said documents were received in evidence, marked "Exhibits 65 and 66."

The hearing was adjourned until May 22nd at 9:30 A. M. (Tr. 1049-1050.)

Hearing reconvened at Chicago May 22, 1928 at 9:30 o'clock A. M., pursuant to adjournment.

C. W. GALLIGAN resumed the stand and testified as follows:

Cross-examination (continued).

By Mr. Walter:

The only increases proposed in rates shown on Exhibit 64 are where an increase or a change is stated under column headed "proposed," in I. & S. Docket 2900. There is no connection between the rates shown in Exhibit 64 and my general statement as to what carriers proposed (Tr. 1052-1053) and we have shown in the Exhibit whether or not that rate was changed or proposed to be changed under the [fol. 811] original proposal in I. & S. 2900. If any change is proposed under that docket, it is shown here. Now we start with an entirely new proposition, read into the record yesterday that it is proposed to advance all rates within the switching district to a minimum of 3¢ per single line, 3½¢ for 2 lines and 4¢ for 3 or more lines, 60,000 pound- minimum. The two proposals or two propositions are entirely separate and distinct. (Tr. 1053.) Exhibit 64 is not a proposal at all, but a statement of the exceptions asked for by the Chairman but under our proposal yesterday, contained

in the memorandum and from which I just read all of these rates will be increased if the Commission approves our proposition except where individual carriers come in at this hearing or some later one and say they do not want to make those increases on particular commodities or for particular movements and in addition, there may be some further items applying to connecting lines which are proportional rates only which if used on road haul traffic come under the reciprocal arrangement and not under local switching in the district and those rates will not be changed. If in Exhibit 64 there is an existing rate not applying wholly to a movement within the district it is not intended to bring that rate within the proposal. (Tr. 1054.) It is not intended to increase any proportional rates applicable to road haul traffic or any reciprocal rates.

Chairman Campbell: I can clear that up very quickly, those are not in issue. (Tr. 1057.)

Mr. J. S. Brown: Well, Mr. Commissioner, the reason I ask the question is that only 2 or 3 days ago they were not going to increase these exceptions and now they are going to change their minds and they might change their minds on the reciprocal charges also.

[fol. 812] Chairman Campbell: Well, I have not changed my mind. That seems to be all, Mr. Galligan. (Tr. 1058.)

The Witness (continuing): We will file a statement showing the percentages of traffic in the district that are interstate and intrastate respectively. (Tr. 1058-1059.)

Mr. Walter: While they are calling the next witness, I would like to have marked as an exhibit the matter which Mr. Forrest referred to, the report on the 19 cars of which we did not have copies at the time. We offer it in evidence as Exhibit 67; which was received and marked, "Exhibit 67, Witness Forrest."

F. C. Furry was sworn and testified as follows:

I am assistant general freight agent of the Illinois Central Railroad system, having been with it for over 25 years, the last 13 of which have been assistant general freight agent. It operates the Chicago & Illinois Western Railroad and my testimony will relate to both lines. As to the 21½c rate on Tar from the Barrett plant at South Chi-

cago to their plant on the Chicago & Illinois Western mentioned yesterday by Mr. Roberts and who said one of the carriers was willing to continue that rate, the Chicago & Illinois Western is the delivering carrier. If other roads desire to continue the rate we will be glad to join them, our view being that the rate should be continued. (Tr. 1060.) The Chicago & Illinois Western is a small switching carrier and 5 or 6 cars per day might not noticeably affect its cost operation, but would affect materially its receipts, and it desires to continue the rate rather than run the risk of losing the business and have it moved by water.

I have two exhibits to offer, the first, No. 68, consisting of a single sheet and the second one No. 69, consisting of [fol. 813] three sheets, which were received in evidence, marked respectively "Exhibits No. 68 and No. 69, Witness Furry." Exhibit 68 shows 5 rates which the Chicago and Illinois Western desires to continue and Exhibit 69 shows similar rates which the Illinois Central desires to continue. There are situations on the Chicago & Illinois Western and Illinois Central for which there should be exceptions and which are shown in Exhibit 68 and 69 and generally apply on black dirt, cinders and refuse used for filling. (Tr. 1061.) Stone, black dirt and strippings covered by the Exhibit pertaining to the Illinois Central have been used very largely for lake front development and our experience is that these commodities will not move on rates higher than we have published, hence we propose no change in them and we may from time to time have to make exceptions on commodities of this nature and will meet that situation when it arises. The first item in Exhibit 68 covers industries on the Manufacturers Junction Railway and the second covers a movement entirely on the Chicago & Illinois Western. The first shows $19.00 per car and the second $7.50 per car. The length of haul would vary anywhere from one mile up to 15 or 16 and the $7.50 is for a one line movement and the $19.00 for a joint line movement. (Tr. 1062.) There is a difference in distance, the one line haul being from Crawford to McCook and the rate really applies to any movements on the Chicago & Illinois Western which are all intrastate. The movement of Tar at the 2½¢ rate from South Chicago is purely a state movement.

Cross-examination.

By Mr. Shank:

Regarding exceptions on black dirt, cinders, etc., I do not think the conditions would be the same if the Illinois Central was not a lake front railroad; (Tr. 1063) and I cannot say whether it would be profitable to other lines but [fol. 814] if it was not profitable to us, we would not want to continue the rates and we do not think those commodities would move at higher rates.

F. A. Meyers was sworn and testified as follows:

Direct examination.

By Mr. Davis:

Am a conductor on the Indiana Harbor Belt Railroad and, with the exception of three years, have worked for it since 1905 as yard clerk, assistant yard master, conductor and switchman. Have been in attendance at this hearing since it started. I assigned the elements of service against the cars that appear in the cost study, working with the cost study committee all the time it was in existence, (Tr. 1065) and attended all of its meetings. I assigned the elements of service against the cars on the Indiana Harbor Belt Railroad. Applying the cost study figures to the movement on the road in 1926, upon receipt of the detention reports Form 6-A from the car accountant, I assigned the elements of service and the index numbers against the cars moving in the cost study. (Tr. 1066.) Taking Mr. Forrest's Exhibit 23, on page 21, shows our index No. 222, a movement from By Products Coke Corporation, Federal Furnace Co., plant to National Malleable & Steel Castings Co., at Bellwood or Melrose Park, of 5 cars, as to which we have the reports of the original conductors showing cars moved as we claim they did. Mr. Forrest cites Chicago & Alton car No. 42312 which he had a man ride a year after the study was made or after the traffic that we used was handled. That car moved, as Mr. Forrest claims, with the exception that the car received preferred handling on the Indiana Harbor Belt. Our yard-master's

turnover from Blue Island, dated August 9, 1927, shows car number and the movement. With this Chicago & Alton car was a Pennsylvania car, No. 282,063 which did not re-
[fol. 815] ceive preferred treatment; and consequently, it went the normal route of the business, (Tr. 1067) to Norpaul and back from there to Melrose Park with the switch engine. The preferred handling mentioned was in a train of what we call shorts for different connections and the conductor stopped at Melrose Park and set it off. Instead of giving the Chicago & Alton car the piecemeal move, we gave it a straight transfer. By through movement, I mean we show as our element of cost a direct movement from Blue Island to Norpaul yard when in fact, the car made what we call a piecemeal movement from Blue Island to La Grange, La Grange to Broadwood, Broadwood to Bellwood and Bellwood to Melrose Park. After assigning the index numbers, we checked those assignments against the record, (Tr. 1068.) taking about 200 or 250 of complicated route numbers which were sent to our car accountant to give us the movement of the cars and they were about all correct.

The only reason for giving the Chicago and Alton Car the preferred treatment is that it appears on our yardmaster's turnover as being a rush car for the National & Malleable Steel Casting Co. (Tr. 1069.) I presume that the man riding the car or someone had said it was a rush car so we held it out on a special track and it was not switched with the local cars. If handled with the latter, it would have gone to track 15, Blue Island, but in this case it was held on the head end of a heavy repair track 22. If someone had not requested preferred movement on this particular Chicago & Alton it would have moved along with Pennsylvania car 282063. (Tr. 1070.)

A car given preferred movement requires more handling. It must be switched out of the cut and on the track not assigned to it. In order to set the Alton car at the industry, the road crew stopped on the hill with the train, cut it off [fol. 816] and let it roll down toward the National Malleable & Steel Casting Co., with probably a man on it to stop it a short ways from the main line switch, the train remaining on the main line track and possibly delaying trains following it. (Tr. 1071.) The second car mentioned in Mr. Forrest's Exhibit 23 was Union Pacific No. 99745.

This was not received at Burnham as set up in our index No. 1910. We received most of our interchange from the Chicago Short Line at Burnham. Our index No. 1910 shows this car handled through Burnham at a cost of 86¢ classified at Burnham and transferred to Calumet City. If it had been shown on our index as received at Irondale, and handled through that point, the cost would have been increased as the classification there would amount to 42¢ and the transfer from there to Calumet City would amount to 46¢ with trackage over Calumet & Western at 15¢, bringing the total to $1.04 instead of 86¢. (Tr. 1072.) These were the only cars that the Indiana Harbor Belt was interested in.

Have been running an Indiana Harbor Belt train, outer belt, continuously for the last nine years, and have worked on different industry engines, and knowing the normal operation of the road I assigned the service element against these cars as I knew them to be. Have been over every foot of track of the Indiana Harbor Belt many times at all hours of the day and night. (Tr. 1073.)

Cross-examination.

By Mr. Walter:

It is not customary, in a movement to the National Malleable & Steel Company, to set a car off at Melrose Park. It is not the normal route of the business. No charge was made for the special handling given this Chicago & Alton car. A charge is made if we make a special run with a car. The Chicago & Alton car was handled in a train of shorts which stopped at La Grange, delivering to the Chicago, [fol. 817] Burlington & Quincy; at Broadview, delivering to the Illinois Central; at Bellwood, delivering to the Chicago Great Western, and then went on to the Soo line. (Tr. 1074.) This was not a special run with the car. My information as to special handling being requested is based on the yardmaster's turnover or report, which showed the car marked "Rush," which shows on the sheet covering this Chicago & Alton car. The cross-entries shown are for the particular train. (Tr. 1075.) The notations in the right hand column are as to condition of train, rush cars, some special handling for some car in the train, or things of that sort, which one yardmaster desires to leave for another.

The O. K. on it was made by Carroll, day yardmaster at Blue Island, and means the car has been lined up and taken care of. The 23 is the heavy repair track at Blue Island. Nothing was the matter with this car that I know of.

This car could not have been put on the repair track and gotten off between 3:15 and 8:55 in the morning, as we worked no repairmen at Blue Island at those hours. A car was placed on this track simply as a convenient place to hold it where the switch engine could get it and put it in the train that was to move it. Yard crews make no repairs to cars in base yards. We have car inspectors and repairmen for that. If a coupler was out of order the car would be put on the repair track and repairmen would fix it. It would be held over and in the following 12 or 24 hours the repairs would be made. (Tr. 1077.) This car arrived at Melrose Park at 1:45 P. M. Behind this particular car they left 15 Soo line cars on the main line while this car was cut on to the track designated for cars for the National Malleable & Steel Castings Company. I cannot tell the time the car arrived at Bellwood station or [fol. 818] when we delivered it to the Great Western. I do not have the wheel report in front of me here and cannot tell when it left Bellwood. (Tr. 1078.) There were 15 other cars with it, but were not a part of this special movement. This car for the National Malleable & Steel Castings Company was put into this train, which was not a special one, being a regular one for making deliveries.

Q. Well, then, when you refer to special treatment you do not mean expedited treatment, do you?

A. The car was held at Blue Island. It did not take the regular course, the normal course of business through Blue Island yard. In using the word "preferred" as to treatment I meant slightly different from that which ordinarily is given, and was handled this way because somebody asked for the preferred movement to get the car out. (Tr. 1079.) In finding the word "Rush" on the sheet I did not assume that somebody thought there should be a rush movement on it, because the car would not appear there unless somebody asked that it be rushed. It might not have been a railroad man, because we would have no object in rushing a car that should take the ordinary normal movement. (Tr. 1080.)

This car had a speedier movement. Otherwise it would have moved with the Pennsylvania car and would have

gotten out to Blue Island about 5:15 that afternoon, while the Chicago & Alton car left there at 8:50 A. M., I believe. Ex. 67 shows it left Blue Island at 10:50 A. M. with Indiana Harbor Belt engine 410 and 58 cars, and got to LaGrange at 11:50 A. M. But I cannot verify that, not having the wheel reports in front of me. The original yardmaster's report for August 9th shows the car in the west yard at Blue Island. (Tr. 1081.) In addition to finding the notation on the sheet, I talked with the man who made the entry, Mr. Harry Ungelder of 286 Burr Oak Avenue, Blue [fol. 819] Island, and he said somebody had asked for preferred movement, but did not say who. I could find from him who made that request and the circumstances about it. I will take Ex. No. 67 that has been filed and check it against the actual handling and have it at a later hearing.

The committee assigned the particular number to designate a particular element of service (Tr. 1082) and ascribed the cost to that, covering the movement of August last year during the test period. I took each element of service and applied that to the traffic moving in September, 1926. I was working on the road at that time and from general knowledge knew how traffic was handled, but I did not take each particular car moving in September, 1926, and trace it as we have this C. & A. car. (Tr. 1083.)

Taking By-Products Coke Corporation to National Malleable & Steel Castings Company at Bellwood, index 29 on the Indiana Harbor Belt, I found the number of cars moving between those points in September, 1926, and from my general knowledge of the operations I assumed certain services were performed at the industry point of origin, and particular movements thereon to destination, and entered the cost figure representing each element of service and added them to get the total movement over the line as I assumed it normally would be made. (Tr. 1084.) If 100 cars moved from the By-Products Coke Corporation over the long haul to the National Malleable & Steel Company and the cut was run through, it would not be a normal movement, and I would deal with it as a single car, because it would not be a normal movement; and by normal movement I mean one devoted to the movement of one or more cars without regard to whether there was a more economical movement actually performed. (Tr. 1085.)

[fol. 820] Chairman Campbell: Mr. Walter, my understanding is that it was agreed between shippers and carriers that a certain test period should be used and that then it should be used for purposes of making calculations as to the other movements. It seems to me obvious that the study must be made upon the general custom and general method of handling cars through that test period, and that we cannot take each one and trace it. (Tr. 1085.) If he handled it in a general way some, perhaps, may have been expedited, and others may have been delayed, but if he sort of averaged it generally I am wondering if we are not splitting hairs a little too much.

Mr. Walter: If they had made a test and applied it against the movements themselves over a period of a month, there would not be any question. All I am trying to develop from Mr. Myers is the manner in which they applied the cost study figures to the traffic figures of 1926. It has been shown that he made the application to the particular cars when those cars did not get the handling that he assumed they did have. (Tr. 1086.)

Mr. Davis: Mr. Myers, in the handling of the cars as described by you, was that the only way humanly possible that it could have been done on the Indiana Harbor Belt? That is, the only way the car would have moved if the Indiana Harbor Belt handled it betwen the two points Mr. Walter refers to?

The Witness (continuing): We have but one route and all cars for that particular industry would move into it: Norpaul, if handled in the regular normal way that business for that district moves.

If we wanted to stop our heavy trains on the hill and tie up the Aurora, Elgin & Chicago and the Great Western we could stop there for every car and not move it through Norpaul. (Tr. 1087.) And if we set the car at Bellwood in-
[fol. 821] stead of where it should have gone, into Norpaul, and let the switch engine haul it back, there are certainly two ways of handling it.

Chairman Campbell: The situation seems to me to be this: The cost study has been presented generally, showing how it was arrived at, which your statistician has criticised. From the cost study presented by the carriers they can make a certain line of argument, and you, from your

criticisms, can make another line of argument, and between those we must arrive at something in regard to the cost study. The differences seem to me are largely matters of argument rather than of technical introduction of testimony, because if we take each of these cars and follow it it would be physically impossible for the Commission to sit and listen to it.

Mr. Walter: Well, your Honor, I am not going to follow along that line at all. I merely wanted to use this as an illustration to develop how he applied his elements. As to the empty car, Mr. Myers, did you at all determine where any empty cars came from, charged for in this cost study from an industry to a consignee?

The Witness (continuing): The assignments of these cars were made by our superintendent of car service from his records, showing point of assignment and everything; but I knew nothing about the application of the cost on the empty cars. I took his assignments and applied the cost to them. (Tr. 1089.)

Examination by Mr. Slater:

On an order of a car for placement for loading we get it at the nearest available base yard. The first move would be from some place to the industry where the car was moved empty for loading. (Tr. 1090.) The accounting people determine the element to be charged for that service. I as- [fol. 822] signed the element of service in the cost. (Tr. 1091.) As illustrating the manner of my assignment of elements of service, take a movement shown on page 7 of Oliver's Ex. 13 from A. C. O'Laughlin Company (Tr. 1092) to Central Lime & Cement Company. Our superintendent of car service from his records showed the car was assigned to this particular loading at Norpaul yard, showing the movement empty. I then applied the classification at Norpaul yard, switching the car out and getting it to the train that would take it to the plant of the A. C. O'Laughlin Company; then the transfer from Norpaul to the O'Laughlin Company at Bellwood, the industry switch at that plant, the transfer from the plant back to Norpaul yard for classification as to direction, because we have no classification tracks at Bellwood; that is whether it is a local car or a through car or a car from the stockyards line. (Tr. 1093.)

The car is then transferred from Norpaul to Chappell Junction, where we set off all cars for the stockyards line. The car is classified there into a stockyards train and moved from there to Elsdon; there classified, because all cars moving out of Chappell Junction are not for the Central Lime & Cement Company; then follows the industrial switch at the Central Lime & Cement. After the car is made empty—all cars coming out of the Central Lime & Cement Company are not for the same destination—it is necessary to classify at Elsdon, with transfer from there to Blue Island; classification over the Blue Island hump, thence transfer to Gibson and delivered to the New York Central, the home for the car. Classification is necessary at Blue Island because at Elsdon classification is only as to direction, and at Blue Island as to districts, with reclassification at Gibson again to put them over the hill there. (Tr. 1094.) The [fol. 823] car moves to Gibson because it is a New York Central car, but all out of Blue Island are not for *for* that railroad (Tr. 1095), and there may be other places the train will go besides Gibson. Sometimes the Indiana Harbor Belt holds New York Central cars for prospective loading. All empty cars arriving at the Gibson yard are in the possession of the New York Central, and all New York Central cars arriving there are in its possession. (Tr. 1096.) The Gibson yard is operated by the Indiana Harbor Belt. A car of ours taken to Gibson yard and one belonging to the New York Central differs in treatment in that the Indiana Harbor Belt would not be classified for the New York Central unless it was a load going out on that road; and the reason for the classification of its car and not one of the Indiana Harbor Belt is, when they are classified over the hill at Gibson they are put into a New York Central train. (Tr. 1097.)

Element 129 was developed in the cost study period on a movement of 15 cars according to our 107 here. (Tr. 1097.) There is a considerable movement of stone from the O'Laughlin Company to the Elsdon district. I can't say how much or where it goes, but there is a considerable movement from the O'Laughlin quarries. The 15 cars moving in the study period did not influence me in assigning costs to a large volume of cars, and that cost based on the few cars, might be assigned to the large number of cars in the September, 1926, period. (Tr. 1098.)

There were no direct transfers from Elsdon to Gibson in which this empty might have moved, because we do not run transfer trains that way; all transfer trains eastbound stop at Blue Island. (Tr. 1098.) There might have been a heavy movement in the cost study period and a very few in the September movement. The transfer movements [fol. 824] as well as the classifications assigned are not based upon an actual check of the records in each case. The industry orders empties from the railroad and it gets the car from the nearest base yard, such as the Gibson, Blue Island, Norpaul or Michigan Avenue yards. (Tr. 1099.) We have a base yard at Michigan Avenue, Calumet City, and others. The agent at these other yards does not hold cars for loading, though we try to anticipate the needs of the industry; and where an industry might load 50 cars today, it might not load more than 5 or 6 the following day.

In following this movement of the New York Central car on the tracks of the Indiana Harbor Belt, empty at Norpaul, it was our duty to return it to the New York Central. (Tr. 1100.) But beginning at Norpaul we assigned all of the costs of that car from the time it was available at that yard to the point at which it was loaded, and from the point at which loaded to the destination point. We then assign the movement of that empty car from that point back to the New York Central after the car is made empty. (Tr. 1101.) If after unloading by the Central Lime & Cement Company, and we had use for it by some other industry, we probably would have used that car in that particular district; but if it did move that way that element of cost, of returning it back to the New York Central, would not appear in the cost study that we have presented. After being made empty by the Central Lime & Cement Company, if it was loaded at Elsdon there would be no empty haul to the New York Central. (Tr. 1102.) We did not follow each individual car, but I can tell whether or not this car was reloaded at the Central Lime & Cement Company or at some other industry in the district, because the detention report 6-A shows where the car was loaded and how it was assigned. The car service department entered on the deten- [fol. 825] tion report the assignment and the release of the car, showing time and place and whether reloaded or empty. (Tr. 1103.)

As to assignment of cost elements in the cost study of switching from the O'Loughlin plant to the Central Lime

& Cement Co., and bearing in mind that the empty was on our tracks at Norpaul at the time we got the order for the empty car, if we had not assigned this car at that point for the O'Loughlin loading, we would have had to assign it from some other point on the railroad, (Tr. 1104) and if we had assigned it from some other point, it might not have been necessary to return it to the New York Central at Gibson Yard, but we might probably have had to take it back to the Pennsylvania at Indiana Harbor, if we assigned the Pennsylvania car, which is a longer haul; and the haul back to the Pennsylvania would have been because the car had been delivered to us under load and made empty on our line and thus required to be returned to the Pennsylvania Railroad. (Tr. 1104.) We have assigned a cost to switching after the car is made empty and the service has been performed of returning it to the home road a service we had to perform because the car reached our line was used and it was our duty to return it to the home road. (Tr. 1105.)

I assigned the element cost of weighing not from the records showing weighing of cars, but from my general knowledge of industrial assignments on the Indiana Harbor Belt. It was not based on actual records, (Tr. 1106.) and that applies whether I assign as many as 3 or 4 weighings to one movement. The same is true regarding the element of cost for cleaning cars. Regarding unusual cost items referred to by Mr. Sauer, as not being used because either too high or too low, we have one of transfer from Gibson from the Youngstown Sheet & Tube Co., plant around $29.00. We did not make use of that. There are no other cost elements not used that I can think of off hand. [fol. 826] (Tr. 1107.) In determining whether an item was unusually high or unusually low, we had nothing in the industrial switching movement or the transfer movement that we thought unusual because the volume of business handled in some cases brought the business up and in other periods probably the reverse could have happened. We had no fixed amount of money used as a measuring stick for industrial switching cost. (Tr. 1108.) On movements from Gibson to Norpaul, for local industries on the Indiana Harbor Belt, we handled them in a local train which builds up at Gibson with Wabash, Belt, Santa Fe, Illinois Central, Great Western and North Western cars This is a piece-meal movement stopping at each one of those stations

to set out. We apply the cost of transfer from Gibson to Chicago Ridge, from there to Argo, from Argo to the Illinois Central or whatever the next point was. Then from Argo to La Grange and from there to the Illinois Central, etc. We selected these particular movements from the train sheets and the wheel reports and assigned the cost in the normal way to the cars moved. If our records showed from our cost study that a larger volume moved from Gibson to Argo than from Gibson to Chicago Ridge, it would have no effect upon our decision to use the 2 moves from Gibson to Chicago Ridge and then from there to Argo. We paid no attention to the volume of traffic moving on the various elements. (Tr. 1110.) We apply the element principles just as the normal move of the car would be made over the Indiana Harbor Belt. This one particular train referred to moving out of Gibson leaves about 10:45 or 11:00 o'clock every day and another train of the same character out of Blue Island. Cars now moving in the first train probably move later in the evening or the night. (Tr. 1110.) In a switch movement from the Chicago, Milwaukee & St. Paul Railroad to an industry in the Central [fol. 827] Manufacturing district on our railroad we would receive the car from that road at our Norpaul yard and classify it there, moving it thence to Chappell for another classification; thence from Chappell to Elsdon for classification and it would probably be delivered to the Central Manufacturing district for whomever consigned, by the Elsdon switch engine. If the car was made empty and not reloaded and returned to the Chicago, Milwaukee & St. Paul Railroad, we would assign that cost to the back haul, but if it happened to be a New York Central car, we would deliver it to that line and assign the cost of delivery to the New York Central. It would go back from the Central Manufacturing District through Chappell and Norpaul if the car was going to the St. Paul Railroad. (Tr. 1111.) But if it was going home to the New York Central, it would go East to Blue Island. We have assigned all that cost to it and if a New York Central car, we would take it home and the cost of taking the car home would be assigned against the switch. If the car was used on our road at Elsdon and loaded to a point at Indiana Harbor and then unloaded, we would assign the empties cost from Indiana Harbor to Gibson and delivery to the New York Central at

Gibson if it went that way, and that would not include the cost of empty haul both times. It would not be included in the movement from the Central Manufacturing District as well as the movement to it. (Tr. 1112.)

When our car accountant showed the car went to a connection we have charged for returning the empty from the point where made empty, and if a foreign line car the cost of returning it home is shown in our report except those that remain empty at some particular point and are used again before the car was returned home. We actually assigned the cost as shown by our car accountants either that the car went home, or to some other connection other than home, loaded or empty. (Tr. 1113.)

[fol. 828] Taking the first charge element No. 25 classification at Norpaul shown on page 7 of Exhibit 13, it was necessary to return the car home whether used in the service or not. (Tr. 1114.)

Element 11 is classification at Elsdon. We would not have had to perform that service if the car had been used. The next item of classification at Blue Island would have been performed if the car had returned home loaded or empty and the next transfer from Blue Island to Gibson is cost that we would have had to assume and likewise the next one classification at South Hump Yard at Gibson. (Tr. 1115.)

Recross-examination.

By Mr. Walter.

The $2.11 charge for transfer from Norpaul to Chappell does not appear to me as high due to the fact that there was a low volume of business moving. (Tr. 1116.) If we were making a cost study in September 1927, the cost would not have been $2.11 and it does not look like a normal cost because the low volume of business is what brought it about. (Tr. 1117.)

Chairman Campbell: Just a moment, Mr. Walter, it seems to me the trouble with the situation as I understand it is that it was agreed that those certain days were taken for the cost and then that cost should be applied to the other movements. Now, I presume it is true that if some other 7 days had been selected instead of these 7 days,

there might have been elements that were not in these 7 days.

Mr. Walter: Yes, Mr. Commissioner, but I am trying to point out this. It is not fair to take that $2.11 and apply it against all of the cars in September.

Chairman Campbell: Well, is that not a matter of argument?

Mr. Walter: We have got to get some facts in the record and the witness admits it is abnormal. (Tr. 1118.) [fol. 829] A normal movement from A. C. O'Loughlin plant to the Central Lime and Cement Co., would not have been from Norpaul to Argo with classification there and thence from Argo to Elsdon because the cars would not go into Argo. Even though on the other 6 days we had 742 cars moving from Norpaul to Argo and 3,514 cars classified there and 812 moved from Argo to Elsdon and we had but 15 moving via the route under which the costs were assessed, I still say the route of movement would be the normal route. (Tr. 1119.) We gave you the actual movement and even though it appears that we had more than 30 times as many cars moving from Norpaul to Argo as from Chappell and had 7 times as many classified at Argo than were classified at Chappell I would still say that we did not pick the wrong route to compute the costs.

Redirect examination.

By Mr. Davis:

This $2.11 charge is applied to the actual movement and was normal for the test period. (Tr. 1120.)

Recross-examination.

By Mr. Tholin:

As to the instructions to transfer men, they were told to show transfer from Gibson until the time they reached the first industry, that is, from the time they reached the point of the switch leading into the industry it would be industry time until they got out of there. If there was a distance of half a mile, to another industry, there would probably be another transfer but if two industries were right adjacent, a transfer to the second one would not be shown. (Tr. 1121.) An engine moving into Argo and

thence to Norpaul and if the make up of the train was changed at Argo, there would be time out but our transfers do not move that way. If the engine was setting out cars at Argo to the Chicago & Alton or the Belt, that time would [fol. 830] be shown from the time the engine stopped at Argo in making interchange to the Belt, for example until it got back to Elsdon and if our classification details and transfer details show that the conductor used the same time for his arrival and departure at Argo and yet completely changed the makeup of the train at that point, it would indicate there was something wrong there, that he had included in his transfer cost certain times spent in doing other work. (Tr. 1122.)

Direct examination.

By Mr. Connell:

Page 29 of Exhibit 13 shows shipment of car of corn from Armour Grain Co., to American Maize Co., via the Chicago & Northwestern and the Indiana Harbor Belt in a Chicago, Burlington & Quincy Car. That car would be received from the Chicago & Northwestern Railway at Irondale and loaded at the Armour Grain Co.; by the Northwestern switches to that elevator. We would transfer the car to Calumet City. The Northwestern may have brought the car to the Armour Grain Co., or the Chicago Belt but I could not say who brought it in there, (Tr. 1123.) or whether it went to that industry under load or not. The first movement of the car when we got it was from the Chicago & Northwestern elevator at Irondale under load. We moved it to the American Maize Co., where it was unloaded and then we charged for the empty haul to the Chicago, Burlington & Quincy at La Grange because the car could not be loaded either by the American Maize Products Co., or in that particular district. La Grange was the nearest point to the home road. (Tr. 1124.)

[fol. 831] Chairman Campbell: At the beginning of this hearing, I made the announcement that at the adjourned hearing testimony would have to be confined to rebuttal testimony only. On account of developments, that ruling must now be abrogated and and the case is open for such

further testimony as may be pertinent, on the entire case, at the next hearing. (Tr. 1125.)

(Tr. 1126):

Recross-examination.

By Mr. Atwood:

The Chicago & Alton car from the By-Products Coke plant to the National & Malleable Steel Casting Co., was set out by the road crew and handled as a local train with local industry cars or with local railroad cars in not sufficient volume to make direct deliveries to railroads, like the Soo Line, Chicago & Great Western and the Illinois Central, though it was a regular train. (Tr. 1126.) This particular train started at Blue Island and its final destination was Norpaul. We have a similar train handling business, moving in the opposite direction. I said the service from Norpaul to the O'Loughlin quarry was a switching service. The La Grange quarries are not served by the same switching crew with empties. Those quarries are served by the Argo switch engines. (Tr. 1127.) The empties arrive from different points in train load lots, some going out of Gibson yard for the quarries in the McCook district and some in train lots come out of Blue Island yards, being gondolas, for the quarries in the McCook district. Loads picked up at La Grange are classified in the district as to direction by the railroads and are handled by these road crews. We have a train out of Blue Island every night which picks up the stone in the McCook district after the switch engine has classified it and returns it to Blue Island with the traffic that goes there, (Tr. 1128.) and is there classified as to district and from there it is handled by one of the local trains with a road crew. It will be handled by [fol. 832] a train going to Michigan Avenue if the car is routed that way or it will be handled by a train going to Calumet City if the destination is South Chicago. (Tr. 1129.)

They are all-switching service crews on our line, but the switching service referred to is handled by railroad crews or transfer crews, which perform transfer service only, while the switching crew or yard crew performs all yard service. The crew running from Norpaul as far as Blue Island or Gibson we call a road-haul crew or transfer crew. (Tr. 1129.)

Chairman Campbell: My understanding is that during the time elapsing between now and the next hearing, the representatives of shippers, carriers, and the state commissions and Mr. Elmore of the Interstate Commerce Commission are to endeavor, by conference, to iron out such disputed facts in regard to the cost study as they may be able to; that where they find it impossible so to do, then such disputed facts will be clean-cut and representative of the various positions taken by the parties, in as concise and as sharply-drawn a manner as possible. That certain exhibits presented by the carriers, particularly Ex. 11, will be reworked by the carriers in regard to cost study cars.

Mr. Walter: Yes.

Mr. Slater: Yes.

Mr. Davis: Yes. (Tr. 1130.)

Chairman Campbell: And additional exhibits are to be prepared by carriers, showing exceptions to the Lowrey agreement, both those taking higher and lower rates than the Lowrey agreement, in connection with the exhibits showing the 26,000 cars.

Mr. Davis: Yes.

Chairman Campbell: It is desirable to have these exhibits in the hands of various parties at least ten days before September 1st, my understanding being that the carriers have agreed to continue the suspension of rates under [fol. 833] Docket 2900, and that all parties must be ready not later than September 1st to go ahead with the case and dispose of it at the next hearing; which will be some time in September, at Chicago. (Tr. 1131.)

Mr. Slater: The agreement of the carriers is that the state rates or the effective date thereof will be postponed pending this hearing.

Mr. Davis: Yes.

Mr. Slater: Will the same act be taken by the carriers on the Indiana order of suspension?

Mr. Davis: Surely. (Tr. 1132.)

Chairman Campbell: We will take an adjournment of this hearing to such time as will be announced later

Whereupon the hearing was adjourned at 11.40 o'clock A. M., May 22, 1928. (Tr. 1133.)

Pursuant to the adjournment taken, the hearing reconvened at Chicago, Illinois, September 18, 1928, at 11 o'clock A. M. (Tr. 1134.)

R. I. PIERCE recalled, testified as follows:

Direct examination.

By Mr. Cardy:

I am the same Pierce who testified in this proceeding on May 18th.

Since that hearing the additional evidence I am about to submit has been considered and approved by our traffic committee and our board of directors, and I offer my exhibit No. 70. (Said document was received in evidence and marked "Ex. No. 70, Witness Pierce.") The information shown in this exhibit is taken from the Biennial Census of Manufacturers for the year 1925, pages 1455 and 1456, being the last report published by the Bureau of Census. [fol. 834] (Tr. 1143.) It shows individual reports by the Bureau of Census for 43 Illinois cities, and shows the relative importance of Chicago Heights as an industrial community, as compared with the other Illinois cities. The exhibit also shows the number of industrial establishments, average number of wage earners, excluding salaried employes; amount of wages and value of products, excluding the value added by manufacturer. The product value is the selling value at the factory, whether sold or not, and value added by manufacturer is the value of products less cost of material.

Of the 43 Illinois cities mentioned in the exhibit Chicago Heights ranks fourteenth in the state as to number of industrial establishments, 11th in number of industrial wage earners, 8th in amount of industrial payroll and in value of products. (Tr. 1144.) The exhibit shows in 1925, according to the Bureau of Census report, that Chicago Heights had 67 industrial establishments employing 4588 persons, excluding salaried employes; industrial payroll $7,016,918, and value of products $40,659,846. (Tr. 1144.) The industrial survey of the Chicago Heights Chamber of Commerce for 1926 shows 5266 industrial employes in Chicago Heights; industrial payroll $8,995,329, and value of products $53,129,826. The variance between the Census Bureau report of 1925 and the Chicago Heights Chamber of Commerce survey for 1926 arises from a different method of classification being used.

Since the last hearing have made an investigation to determine value of plant and plant equipment of the various industrial concerns in Chicago Heights, 38 companies reporting; total present value of plant and equipment, less depreciation, of these 38 companies, $18,252,348. The growth of Chicago Heights as an industrial community is due to its proximity to Chicago, and to the maintenance of [fol. 835] the Chicago switching district basis of rates on traffic to and from Chicago.

Ex. 71 is a list of manufacturers at Chicago Heights, with list of competitive industries in the Chicago switching district. (Said exhibit received in evidence, marked "Ex. No. 71, Witness Pierce.") (Tr. 1145.) It was compiled to show the commercial competition between Chicago Heights industries and those in the Chicago switching district, and results from a survey made through Chicago Heights industries to determine the extent of that competition. Fifteen Chicago Heights industries report 43 concerns at 34 different points in the Chicago district that manufacture articles competitive with those produced by the 15 concerns at Chicago Heights.

The American Manganese Steel Company at Chicago Heights, on the Chicago Heights Terminal Transfer Railroad, manufactures manganese steel castings. In the Chicago district its competitors are Pettibone-Mulliken Company at Cragin, on the Belt, and Kensington Steel Company at Kensington, Illinois, on the Pullman Railroad. The extent of this competition is illustrated by the various concerns shown in the exhibit. (Tr. 1146.)

All these industries at Chicago Heights ship considerable tonnage to the Chicago switching district, sold in competition with similar industries in the Chicago district, and most of the Chicago Heights industries purchase large amounts of raw materials in the Chicago District. (Tr. 1147.)

Saur's Ex. 7 shows $18.96 total average operating per car cost for two-line hauls in the district, and total average operating cost of .0231 cents per hundred pounds. For three-line hauls, $21.64 average per car operating cost, and .0258 cents average operating cost per hundred pounds.

His Ex. 8 shows average per car operating cost of $18.81 [fol. 836] for two-line hauls between Chicago Heights and the district, and .0259 cents average operating cost per 100

pounds; and $21.60 average per car cost for three-line hauls between Chicago Heights and the district, and total average operating cost of .0309 cents per 100 pounds. (Tr. 1147.)

Transportation service rendered by the carriers in moving traffic between Chicago Heights and the Chicago switching district is the same as that rendered by the carriers moving traffic within the district; and we believe the commercial competition should be an important factor in fixing the boundary line of the Chicago switching district.

In connection with the commercial competition between industries at Chicago Heights and those within the Chicago switching district, I have prepared a map, Ex. No. 72. (Said document received in evidence, marked "Ex. No. 72, Witness Pierce.") (Tr. 1148.) On the exhibit are circled the 34 different points in the district where the 43 industries therein are competitors of the Chicago Heights industries. (Tr. 1148.) Chicago Heights iron and steel producers have competitors at Indiana Harbor, East Chicago, Deering, Irondale, Cragin, Kensington, and other points; and brick producers have competitors at Crawford, Galewood, Schiller Park, Riverdale, Weber, Healy, and Blue Island. These are illustrative of the general competitive situation of practically all Chicago Heights industries, indicating the commercial necessity for the preservation of a uniform basis of switching between points within the district and Chicago Heights. (Tr. 1149.)

My next three exhibits are numbered 73, 74 and 75. (Said exhibits received in evidence, marked respectively "Ex. No. 73, 74 and 75, Witness Pierce.")

Ex. 73 shows industries and concerns on the Baltimore & Ohio Chicago Terminal having individual or private [fol. 857] tracks. Ex. 74 shows industries on Chicago & Eastern Illinois and Chicago & Western Indiana in the Chicago switching district. Ex. 75 shows present and suspended rates between points on Chicago Heights Terminal Transfer Railroad and points in the Chicago switching district, as compared with present and suspended rates between competitive industries within the Chicago switching district. The three exhibits show industries and territory in the district served locally by the Baltimore & Ohio Chicago Terminal and Chicago & Eastern Illinois Railroad. (Tr. 1150.) Heavy lines on my previous exhibit show routes

of Baltimore & Ohio Chicago Terminal and Chicago & Eastern Illinois in the Chicago switching district, the former serving a considerably greater area via its own line than does the latter. Ex. 73 shows over 400 concerns on the Baltimore & Ohio Chicago Terminal and Ex. 74 shows 61 on the Chicago & Eastern Illinois and Chicago & Western Indiana in the Chicago switching district. Industries on Chicago Heights Terminal Transfer Railroad have competitors on practically all lines in the district, and Ex. 75 shows in a majority of instances the suspended rates from and to Chicago Heights Terminal Transfer are ½ cent higher than the basis from and to the Baltimore & Ohio Chicago Terminal, and between the former and connecting lines are ½ cent higher than the other lines shown. (Tr. 1151.)

A higher charge to and from points on the Chicago Heights Terminal Transfer than obtains on other lines depends upon whether the service performed by the Terminal sufficiently increases the cost to warrant a higher rate. The rates to and from the Terminal are the same as rates to and from the Chicago & Eastern Illinois. The acquisition of that terminal by the Chicago & Eastern Illinois has not brought about changed conditions justifying a higher charge being [fol. 838] assessed from and to the Terminal than would apply from and to the Chicago & Eastern Illinois. (Tr. 1152.)

Chicago Heights is 3.7 miles from the southern boundary line of the Chicago switching district. Hobart, Indiana, to Clark Junction, the first station on the Pennsylvania in the district, is 9 miles; Aurora to LaGrange, the first station on the Chicago, Burlington & Quincy in the district, is 23 miles, and from Joliet to Gary 23 miles; 25 miles Joliet to McCook on the Atchison, Topeka & Santa Fe, Gary being approximately 2 miles from McCook; Joliet to Blue Island on the Rock Island, and to Summit on the Chicago & Alton, is 25 miles; I mean Gary, Illinois. (Tr. 1154.)

The boundary line of the switching district should be determined by the area within which the carriers actually render switching service, and the commercial competition between industries within the area where the switching service is performed. Mileage is not an important factor in determining switching boundaries, as length of haul will always vary in switching district. Between Hobart and Chicago the carrier performs a road-haul service with a

local way train operating between Valparaiso and Clark Junction, Indiana (Tr. 1155), and so found by the Commission in Volume 122 I. C. C. 81. The carriers perform road-haul service from Aurora and Joliet to points within the district. The carriers between Chicago Heights and Chicago switching district perform switching service. (Tr. 1156.)

(Ex. 76 offered and received in evidence, marked "Ex. No. 76, Witness Pierce.") It contains 32 pages and shows revenues per car under proposed joint-line switching rates, compared with revenue per car on various commodities from and to Chicago. (Tr. 1158.)

[fol. 839] The Exhibit contains 523 rates, 296 of which produce car revenue of $24.00 and 227 produce less than $24.00 under line haul rates. (Tr. 1158.) These are rates published from and to specific points and are not intermediate rates or rates from or to points taking the same point as a basing point. To avoid 4th section violations under increased switching rates, the carriers are obliged to increase the minimum charge per car on line haul traffic from and to Chicago from $19.00 to $24.00. Pages 1 and 2 are summaries of average miles for the different revenues per car; page 1 showing 64 rates per car revenue is $15.00 and average haul 40.7 miles; 41 rates with $19.50 per car revenue, average haul 84.5 miles. On page 2, are 296 rates producing $24.00 per car revenue with average haul 76.1 miles. (Tr. 1159.) On page 1 are 96 rates with car revenue less than $19.00, the present minimum per car charge of traffic from and to Chicago. The summary on page 3 shows average per car revenue ranging from $16.80 to $23.93 on minimum weights ranging from 10,000 to 60,000 pounds. The exhibit shows the increased charges and the increased revenues that will result if the carriers' proposals are allowed. In compiling this exhibit we selected all rates we could find where car revenue did not exceed $24.00 and in most instances routes are shown by both the short line and the longer distances. The rates and the revenues per car in this exhibit would include absorption of terminal switching charges in the Chicago district as well as such charges at origin or destination stations. Generally, carriers absorb origin and destination switching charges down to a minimum of $12.50 to $19.00 for a road haul movement. (Tr. 1160.) Witness Vivian's Exhibit 11

shows 21.8 miles average haul for 2 lines and 26 miles for 3 lines between points in the Chicago-Chicago Heights [fol. 840] District. Based on present minimum, present rates of 2½¢ and 3¢ per 100 respectively, produce $15.00 and $18.00 per car, while page 1 of this exhibit shows average road haul distances range from 29 to 85 miles with per car revenues ranging from $10.00 to $24.00; the average distance on this exhibit for road haul is 65 miles; average per car revenue $21.44, average minimum weight 25,476 pounds.

My Exhibit No. 77 is a map, which was offered and received in evidence marked "Exhibit No. 77, Witness Pierce". (Tr. 1161.) This map shows the territory where line haul per car revenue based on tariff minimums from and to Chicago does not exceed $24.00 per car. It shows the territory which will be affected by increased switching rates in the Chicago-Chicago Heights district. This territory extends West to the Mississippi River, North to the Milwaukee-Madison line, South including Peoria & Bloomington and East in Indiana including Michigan City. My Exhibit 78 shows revenue per car on various commodities from and to Chicago, which was received in evidence, marked "Exhibit No. 78, Witness Pierce". (Tr. 1162.) It consists of 32 pages, one to four inclusive, summarizing the information in pages 5 to 31 inclusive. It shows 509 rates from and to Chicago on various commodities with per car revenues ranging from $24.63 to $36.00, but does not show any per car revenues less than $24.00. The average miles range from 37 to 245. Average distance of all 116.3 miles. Average per car revenue is $31.15; average minimum weight 28,678 pounds. Under these rates carriers absorb switching charges at origin and destination. (Tr. 1163.) My Exhibit 79 is a map, to accompany this exhibit, which was offered and received in evidence, marked, "Exhibit No. 79, Witness Pierce." (Tr. 1163.) It outlines the territory where per car revenue on various commodities from and to Chicago does not exceed $36.00. [fol. 841] Points circled are some specific points from which per car revenue on various commodities from and to Chicago range from $24.63 to $36.00 as shown in the previous exhibit. It is our position that with the inclusion of Chicago Heights in the Chicago Switching District, that the rates on line haul traffic from and to Chicago Heights

should be placed on the Chicago basis which will result in some increases as well as some reductions. (Tr. 1164.)

Cross-examination.

By Mr. Orcutt:

The outer lines shown on Exhibits 77 and 79 are not proposed as the boundaries of the Chicago Switching District.

Chairman Campbell: Well, now, I think perhaps we ought to understand this thing a little more clearly before we proceed further. We are receiving this testimony but not for the purpose of determining whether the switching district of Chicago should be extended or not. This investigation is confined to the switching district of Chicago. The carriers voluntarily have heretofore given Chicago Heights the same rates as the Chicago Switching District. Now, I think this is probably what will happen: We will determine what the rates should be in the Chicago District but do not believe we will determine in this proceeding as to whether Chicago Heights should have the same rates or not. (Tr. 1165-1166.) That is something that will have to be determined in the future by voluntary action of the carriers. * * * So, I do not want you to get the wrong impression that this testimony is being received with any idea that we are in this proceeding, going to extend the switching limits of the Chicago Switching District.

Mr. Slater: Mr. Commissioner, I would like to ask this, "Mr. Webster, as to some of the rates from Chicago Heights to Chicago where they were on the same basis as to the rates between points in the Chicago District, [fol. 842] does your tariff propose to increase them in the same amount or make the same increases as apply within the district?"

Mr. Webster: We do, yes, sir.

Mr. Slater: We have that before us for determination, Mr. Commissioner. (Tr. 1166.)

Chairman Campbell: Yes; as I say, those matters are before us but insofar as taking the limits of the Chicago Switching District and crowding them on out is concerned, I do not think we have that before us.

Mr. Webster: Mr. Commissioner, have you before you the level of the rates or the measure of the rates Chicago vs. Chicago Heights?

Chairman Campbell: I do not think we have before us the measure of the rates from Chicago Heights to the switching limits.

Mr. Webster: They are under suspension?

Mr. Slater: Yes.

Chairman Campbell: Well, if they are under suspension, we will have that in the suspension case but I do not think our general investigation goes to that extent.

Mr. Webster: Well, is not the suspension case a part of your general investigation?

Chairman Campbell: Yes, that is, not necessarily covering the same scope however. The rates that are suspended, of course, are under investigation (Tr. 1167) but as to those rates which are under suspension the carriers are the proponents and therefore carry the burden to justify.

Mr. Webster: The Commission, of course, understands that our rates covering all traffic between Chicago and Chicago Heights are under suspension in this proceeding?

Chairman Campbell: Well, as I say, I am not entirely [fol. 843] clear as to just what is under suspension; and my statement was for the purpose of making it plain that insofar as the general investigation is concerned, I do not understand that we propose to extend the switching limits as switching limits of Chicago. Of course, if we have rates here proposed that are under suspension, those rates are under investigation.

Mr. Webster: Well, I wanted that to be clearly stated here on the record because every rate that we have between Chicago and Chicago Heights on every kind of traffic is before the Commission in this proce-ding.

Chairman Campbell: Very well.

Examiner Faul: Are those rates published in a switching tariff?

Mr. Webster: Yes, sir, they are published in a switching tariff.

The Witness (continuing): And they are the same as the rates within the district and that is also true of the Baltimore & Ohio Chicago Terminal.

Mr. Webster: It is an individual issue of the Chicago & Eastern Illinois and not in the Lowrey switching tariff.

The rates from Chicago Heights have been carried in the individual issue of carriers but are all under suspension. Joint rates are published in the Galligan Tariff. Local rates between Chicago and Chicago Heights are switching rates published by the Chicago & Eastern Illinois. But by use of the Galligan Tariff No. 20 Series, as an application sheet, that switching rate is extended subject to a minimum of 3¢ over the entire Chicago Switching District. (Tr. 1169-1170.)

Cross-examination.

By Mr. Davis:

On page 5 of Exhibit No. 76, the minimum weights shown [fol. 844] were not taken from the classification; those are the minimums of the specific commodities items published in the tariff shown on the last page of my exhibit and govern the rates there shown. (Tr. 1170.) It may be true that the traffic loads heavier than those minimum weights, not only within the district but as to line haul traffic as well. But if district traffic loads heavier than the minimum of 60,000 pounds, the ratio would be the same on both switching and line haul traffic. (Tr. 1171.)

Chairman Campbell: Are there any further questions?

Mr. Davis: I am a little doubtful as to whether or not I should go into the reasons why one district should be included and one left out. Most of the testimony of this witness is along that line, however, if we may consider that the switching limits will not be extended in the general investigation, I have no more questions to ask of the witness.

Chairman Campbell: Well, I do not want to be understood quite as broadly as that. I say, of course, whatever issues are before us will be considered. My understanding is that the question of extending the switching limits as such is not before us but the rates in the tariffs under suspension are before us.

Mr. Davis: Yes sir; and that would go to the reasonableness of those rates in so far as they are not district rates?

Chairman Campbell: Yes.

Mr. Walter: My understanding of the purpose of Exhibits 77 and 79 is to show if rates in the Chicago District are increased as proposed it will be necessary in order to

avoid 4th Section violation to change every rate named in the Exhibit as shown on the map immediately following; [fol. 845] and whether or not Chicago Heights is involved, does not have anything to do with these two exhibits.

Chairman Campbell: I understand that is the purpose of Exhibit 79.

Mr. Walter: That is the purpose of both Exhibits 79 and 77.

Mr. Cardy: That is correct. (Tr. 1172.)

Cross-examination.

By Mr. Slater:

Joliet is 23 miles from the outer edge of the Chicago District via the Santa Fe, to Gary and via the Rock Island to Blue Island and from Joliet to Summit via the Chicago and Alton is 25 miles. (Tr. 1173.) I thought those were the minimum distances from Joliet. As far as I can find, those are the minimum distances. The carriers in certain instances propose on line haul traffic to increase the car revenue to $24.00. (Tr. 1174.) The increased amounts of minimum revenue required before the carriers will absorb in the increased line haul rates, the switching in the district are in I. & S. Docket 2900.

Mr. Galligan: Yes.

Mr. Webster: Yes. (Tr. 1175.)

Mr. Slater: As to that increased revenue, I am inquiring whether it is proposed that the increased revenue shall accrue to the switching carriers or to the line haul carriers?

Mr. Galligan: The line haul Carriers.

Mr. Slater: So that in addition to the switching matter which we have before us, we have this proposal to increase all line haul rates which are less than $24.00 per car to $24.00.

Mr. Galligan: The publication of that rule in the switch- [fol. 846] ing tariff was to avoid or remove possible 4th Section violations in connection with road haul traffic moving to Chicago on low commodity rates where the earnings per car might be less under the rates as published than would result from the application of the switching rates within the Chicago Switching District. This may not increase any of these rates providing the loading is heavy which it probably would be. (Tr. 1176.)

Mr. Slater: I observe numerous commodities which move under a revenue which is less than $24.00 per car. Those would be increased to $24.00 per car would they not?

Mr. Galligan: Not necessarily; those are minimum rates and if you will notice, practically all load 18,000 to 20,000 pounds. The minimum on agriculture implements is 20,000 pounds and they cannot load over 30,000 pounds.

Mr. Slater: The result of that is the revenue on that traffic must be increased to $24.00 per car under this proposal.

Mr. Galligan: The total revenue would have to equal or exceed $24.00 per car in order to remove 4th Section violations providing the Commission grants the increase asked for in switching rates in the Chicago District. (Tr. 1177.)

Mr. Slater: I am calling attention to the fact that in addition to the increase in the switching rates, there is also presented to the Commissions the question of increasing the line-haul revenues on numerous commodities moving in the Chicago switching district.

Examiner Faul: Do I understand that that covers only the commodities where the rates are under suspension in I. & S. 2900?

Mr. Slater: That covers all traffic into Chicago.

[fol. 847] Examiner Faul: Not in so far as the Interstate Commerce Commission investigation is concerned.

Mr. Slater: Did you not suspend Lowrey Tariff 20-A or 20 series?

Examiner Faul: I say that covers only the commodities covered by I. & S. 2900.

Mr. Slater: Everything.

Examiner Faul: But the general investigation covers only switching rates.

Mr. Galligan: That is true.

Mr. Slater: You mean that is only in the suspension proceeding?

Examiner Faul: Yes. (Tr. 1178.)

Cross-examination:

By Mr. Livinghouse:

There is no proposal to increase rates up to $36.00 per car. The only proposal we have before us in I. & S. 2900

is to increase the line-haul rates up to a minimum revenue per car of $24.00, which will affect the territory shown by my Ex. No. 77, going as far east in Indiana as Michigan City, and also it is in interstate rates from points in Wisconsin on the Milwaukee-Madison line. (Tr. 1179.)

From a point around Fort Wayne and Muncie the present minimum revenue per car to Chicago is $36.00. There is no proposal to increase that minimum revenue. There is no proposal to increase rates in the switching district up to $36.00 per car. The only territory affected by 4th section violations would be that where the per car revenue is $24.00 or less.

Recross-examination.

By Mr. Slater:

The rates shown in my Ex. 75 where Chicago switching district rates are less than between Chicago Heights and [fol. 848] points within the Chicago switching district, are due to plussing those rates ½ cent on account of the acquisition of the Chicago Heights Terminal Transfer Railroad by the Chicago & Eastern Illinois. (Tr. 1180.) When the Chicago & Eastern Illinois acquired that terminal road it made the rates ½ cent higher from the Terminal than from the Chicago & Eastern Illinois on joint-line traffic. Previously they had been the same as from points on the Chicago & Eastern Illinois, and at that time it absorbed the Chicago Heights Terminal Transfer Railroad switching.

We are asking for the continuation of our present relative rate position as compared with points in the Chicago district, and are also asking inclusion of Chicago Heights in the Chicago switching district. (Tr. 1181-1182.) We want exactly the same rates existing in the district, whatever they may be, and willing to take the Chicago basis on line-haul traffic in all directions. That would increase the rates on southbound traffic and decrease rates on some of the northbound. (Tr. 1182.)

FRANK W. RENWICK, sworn, testified as follows:

Direct examination:

By Mr. McCornack:

Am president of the Chicago Gravel Company, which owns a gravel pit at Rockdale, Illinois.

Mr. McCornack: As I understand it, Mr. Commissioner, we cannot get any reduction in the gravel rates to Chicago.

Chairman Campbell: The ruling is that we are not going to consider any of those cases that involve line-haul rates that have been heard and that have not been reopened and [fol. 849] consolidated with these cases. You have made an application which the Commission has not acted on. (Tr. 1183.) For the purposes of this case I do not want you to put in that case or go into it.

Mr. McCornack: I am not going to do that, Mr. Commissioner, but I am going to rebut testimony that is in this record.

Chairman Campbell: All right, go ahead. (Tr. 1184.)

The Witness (continuing): Have heard the testimony given in this proceeding; am coversant with actual operation of gravel pit and have been familiar with such operation for 32 years. My experience with building materials includes gravel and with a few years of experience with crushed stone. Am familiar with the nafure of the gravel pits in Illinois, Wisconsin and Indiana that ship to Chicago. Have visited all of them.

There is a marked difference between the Joliet district and other pits. The character of the material produced in the Joliet district pits is very different from that anywhere else in this state or in Wisconsin or in Indiana. (Tr. 1185.) The Rockdale gravel deposit and the majority of it in the Joliet district carries a much greater percentage of stone, necessitating a larger crushing capacity. It runs higher in silt content, requiring much more washing than ordinary gravel does. The average gravel plant within shipping distance of Chicago carries 2 or 3 crushers of not very large capacity. The particular plant you refer to in Joliet has a battery of 10, all of which are busy. (Tr. 1186.)

Mr. Womer stated that production of stone involves stripping, drilling for charge, blasting, shoveling up broken

stone, transportation to crusher, crushing, then washing and screening, which is correct in the concrete. (Tr. 1189.) [fol. 850] He stated that in producing gravel there was excavating, transportation to the washer, and washing; but in the production of stone, sand and gravel in the Joliet district there is very little, if any, variation in mechanical process aside from the drilling and the shooting, in stone quarrying. Stone production has an advantage over gravel in cost of handling their stripping, which is important on both commodities. Average gravel pit stripping removes overburden from perhaps 30 feet of material, while the removal of over-burden in stone quarries uncovers what would sometimes equal 300 feet. The average stone quarry, because of its depth, has a limited movement of its material in the quarry, while a gravel pit frequently and generally extends to a mile of haulage.

Stone in the Chicago switching district is crushed more easily than the gravel of the same district, and we handle a great amount of granite, trap rock and niggerheads, which are more wearing on the parts of the machinery and require more power than ordinary limestone does. (Tr. 1190.)

Our washing, which is growing more expensive every day, has required installation and maintenance of a pumping line for a mile, a hook-up of 150 horse-power, and pipe line 14 inches in diameter, in itself a very expensive installation. We must deliver to our plant a minimum of 4,000 gallons of water per minute. After the washing process we are handicapped with the disposition of this water we have carried for a mile and taking care of the silt naturally coming out of the gravel, that being a very expensive item which does not enter into the stone crushing proposition.

When we get ready to sell our material we have handled, under the rules of the State of Illinois, 3,000 pounds of ma- [fol. 851] terial, where stone people equal the same amount of 2,500 pounds to create a cubic yard of material. The stone people have expense for their drilling and shooting, and nearly everyone knows what that amounts to. But with the gravel in the Joliet district our crushing, extra transportation, stripping and washing more than offset the drilling and shooting of stone. There is some washing on

the crushed stone in the Chicago district, but not to exceed 5 per cent (Tr. 1191), and 100 per cent of gravel is washed. The relocation of a mile of track is more expensive than one covering a quarter of a mile. A half-mile would be a liberal estimate on the quarry propositions around Chicago for main and lead-in track.

The statement that it costs the Consumers Company two or three times as much to operate their stone quarries as it does to operate their gravel pits I am inclined to say is correct. But am positive the Consumers Company has not operated a gravel pit in the Joliet district. From a competitive standpoint the production of gravel in the Joliet district presents an entirely different problem than production at other pits shipping to Chicago. (Tr. 1192.)

Comparing the stated investment of the 7 quarry companies at Chicago as being $8,500,000 with the investment in gravel pits outside of Chicago, it may be said that stone quarry or gravel pit investments are very much a matter of bookkeeping, something like the railroads before the Interstate Commerce Commission. I know of four gravel plants that can consistently carry their investment at $4,000,000. My judgment is that the $8,000,000 described for 7 or 8 stone quarries is very high. The amount of money invested in gravel pits in Zone 1 would probably be [fol. 852] on a parity with the investment in the 7 quarries in Chicago. On the question of higher land values of stone quarries within the Chicago district, I may say we have paid at least twice as much per acre for gravel land in the outside district as we have been offered stone land for in the inner district. (Tr. 1193.)

We have been doing the spotting of cars ever since the plant was built, which was before some of these stone quarries were in existence. It is a common practice for gravel people, and it is universal so far as our company is concerned. The material is weighed before it leaves our plant, at our expense. We operate either 3 or 4 engines at Rockdale, which do our spotting and deliver cars to the carriers. They make up the trains for the railroad to come in and take out. They are weighed and billed by us (Tr. 1194), but at Spalding the material is weighed by the St. Paul as it pulls out the train that we have made up. It weighs without breaking, except as they have to to meet the requirements of the Weighing Association.

The drilling machinery and the power to run it in the stone quarry is the only equipment they use in excess of anything in a modern gravel pit. (Tr. 1195.)

Cross-examination.

By Mr. Cardy:

Our gravel pit at Rockdale is the nearest one to Joliet that we operate, and is the one nearest to Joliet. The cost of mining and producing gravel there is considerable more than in producing at other pits in Zone 1. We operate a plant at Plainfield, Illinois, about 9 miles from Joliet, where we have a somewhat different proposition, as we take that gravel, or a great part of it, from under water. We have [fol. 853] a plant at Spalding that is fairly typical of other gravel plants in Zone 1. (Tr. 1196.) Our most unusual situation is at Rockdale. There is a good deal of variation in the cost of production of sand and gravel in Zones 1 and 2. Approximately 20 plants, including Rockdale, are in Zone 1, and 24 or 25 in Zone 2. The situation at Plainfield is somewhat different than at other plants in Zone 1, because of the water and heavy stripping with a short face. (Tr. 1197.) We have the actual cost figures on these plants at the offices. (Tr. 1198.)

Chairman Campbell: Well, let us not go into that cost question.

Mr. Cardy: All right. (Tr. 1199.)

Redirect examination.

By Mr. McCornack:

Plainfield is between Rockdale and other pits in Zone 1. The crushing there is a little heavier than at other plants in Zone 1 except Rockdale. (Tr. 1199.)

R. O'Hara, sworn, testified as follows:

Direct examination.

By Mr. Rynder:

Am manager transportation department of Swift & Company. Its principal packing plants in the Chicago district

are located on the Chicago Junction Railway (Tr. 1201) in the Union Stockyards district, within boundaries on the south 47th Street, on the north 39th Street, on the east Halsted Street, and on the west Robey Street, practically one square mile.

My Ex. 80 is a map prepared showing switching districts of the Chicago Junction Railway in and about what we [fol. 854] may call Packingtown. (Said exhibit received and marked "Ex. No. 80, Witness O'Hara.") (Tr. 1202.) On the map Halsted Street would be at the east end of the blue line running north and south; Ashland Avenue is one mile west, paralleling Halsted Street north and south. On the map 47th Street is south of the brown block, 49th Street is the south end of the two blue blocks, just ¼ of a mile south of 47th Street. On the map 39th Street, the northern boundary of the packing house district, runs along the north end of the brown block.

The portion of the map colored brown shows the district within which packing house plants are located. (Tr. 1203.) In the district colored brown, described as Packingtown, the two red blocks are separate districts of the Chicago Junction Railway, being the receiving yards for the Eastern and Western lines on the Chicago Junction, known as the 47th Street district and Loomis Street district. Under the rates proposed a movement from one of the small red blocks to any point in the brown block at an increased rate, the increased rate would cover some very short movements to and from points in the brown district, some, you might say, across the street; just a comparatively few feet. I refer to these as interdistrict rates. (Tr. 1204.)

Swift & Company has a movement between their packing plants located in the brown block and their plants in the blue block on the right-hand side of the map. It is less than a mile in distance, averaging probably a half-mile. We have a movement from Robey Street car shops to Ashland Avenue car shops, being from point in yellow on the left to point in brown on the right, maximum of a half-mile distance. There is a rather substantial movement from a [fol. 855] point in the blue to a point in the brown across the Chicago Junction Railway tracks to get the product of our packing houses into storage houses in the brown territory; that is less than 200 or 300 feet distance. The movements would range from a maximum of 1 mile in dis-

tance to a minimum of 200 or 300 feet, and still be interdistrict movements. (Tr. 1205.)

Ex. 81 is a statement showing the history of the rates involved. (Said document offered and received in evidence, marked "Ex. No. 81, Witness O'Hara.") This exhibit shows a substantial increase in the rates applied since 1913 to date.

We have prepared another exhibit, 82 (said document offered in evidence, marked "Ex. No. 82, Witness O'Hara"), which shows aggregate increase in freight charges that Swift & Company would pay if proposed increases in interdistrict switching rates are allowed, in the sum of $11,025.00. The exhibit shows a majority of cars moved under the $12.00 rate applicable to movement in privately owned cars, being $5.00 less than movement in railroad owned cars. (Tr. 1206-1207). The Chicago Junction Railway owns no refrigerator cars, and few others, and it would be necessary for it to call upon its parent company or outside lines to furnish cars if we did not own our own. If it furnished the cars it would have to call upon its connections if they switched them from their receiving yards at Ashland Avenue to the packing plants located at Robey Street, where they would be initially iced; they would then be switched from there to the loading point, from the loading point to the unloading point, and from the unloading point back to the receiving yard of the owning road. (Tr. 1207.)

[fol. 856] When we furnish our own cars they are initially iced at the loading dock and are really in shuttle service between the various houses in the district, that is, they are moving in both directions most of the time. We receive no allowance for the use of our cars in the switching movement on the Chicago Junction Railway other than the difference in the switching cost but nothing in the way of mileage or per diem. The Chicago Junction averages around 5½ days in the switching movement and if it furnished the cars, it would cost it $1.00 per day per car or about $5.50. The difference in switching charges in private cars is $4.00 less on intra district movement and $5.00 less on inter district movement than in railroad owned cars, which actually results in a few inter district movements of only $3.00 reduction on account of the light loading of the commodity. (Tr. 1208.) The increase in freight

charges we would pay as shown in Exhibit 82, by increasing the $12.00 column to $18.00 and the $15.00 column to $18.00. The average loading of hanging loads which means meat hanging from the roof of the car is about 25,000 pounds. Average per car of floor loading is 35,000 pounds. $18.00 per car of 60,000 pounds at 3¢ both loadings will result in 7½¢ per hundredweight on hanging loads and 5½¢ on the floor loads. It is impossible to load 60,000 pounds of meat or packing house products in refrigerator cars which are switched from one point to another in the stock yards direct. The loadings stated by me are the average loading. (Tr. 1209.) The maximum loading is controlled by the American Railway Association rule 86 which prohibits our loading more than 103,000 pounds on the rail. Average car weight is from 51,000 to 54,000 pounds which would allow a load of around 52,000 pounds in the refrigerator cars. In no instance could we load the minimum of 60,000 pounds. It is not proper to make a charge on the basis of a minimum weight which cannot be loaded. In the switching [fol. 857] movement we are discussing here, at least 90% of the refrigerator cars move loaded in both directions. The carrier very seldom performs empty haul to get the car into another switch movement. Generally speaking, the cars are under ice and there is another 6,000 pounds we cannot load in the car because the bunkers contain 6,000 pounds of ice so that cuts potential actual loading down to 48,000 pounds. (Tr. 1210.)

Cross-examination.

By Mr. Davis:

All of the movements referred to are strictly and absolutely intra state movements and not connected with inter state movements. It is my understanding, Mr. Slater, that no tariffs have been filed, proposing any changes in these rates and they are not before the Illinois Commission at this time but based on the statement made by Mr. Gallagan to the effect that these rates were not excepted from the proposal of 3¢ for 1 line, is the reason we came in to point out the effect of that. We have made search for tariffs carrying such changes but none has come to our attention. (Tr. 1211.)

Mr. Slater: Do you know of any, Mr. Galligan?

Mr. Galligan: No; only as stated in the previous hearing we considered that those rates were involved in the general investigation instituted by the Interstate Commerce Commission into all rates within the district.—

Mr. Slater: Well now, let us get that clear. The investigation instituted by the Interstate Commerce Commission concerns the interstate rate does it not, Mr. Commissioner?

Chairman Campbell: I made the statement when you were out, I believe, Mr. Slater, but while these rates were not probably involved in our investigation still it was a joint hearing and I asked Mr. Tholin and he said he thought we ought to take the testimony. (Tr. 1212.)

[fol. 858] Mr. Slater: The matter of the investigation of the Illinois Commerce Commission concerns only the suspension cases; only the tariffs under suspension and there are no tariffs suspended proposing this change, (Tr. 1212.) because none has been filed.

Mr. Slater: Mr. Rynder, it is not your opinion that the Illinois Commerce Commission has these rates under investigation here?

Mr. Rynder: Mr. Slater it is our opinion that the matter is not under investigation by it.

Mr. Slater: With the statement that no rates are before the Illinois Commerce Commission excepting those other suspensions, there is nothing before the Illinois Commerce Commission. (Tr. 1213.)

Mr. Rynder: That is what we shall contend and we are simply perhaps taking an ultra cautious position in view of the facts that have been called to your attention.

Mr. Slater: Well, I will state for the Illinois Commerce Commission that we are not considering any rates except those under suspension and these not being under suspension are not before us in this proceeding, but I have no objection, Mr. Rynder, to your naming these other witnesses who would testify in substance the same as Mr. O'Hara.

Mr. Rynder: The other two witnesses who would, if called, testify to the same effect as Mr. O'Hara are John R. Baker of the Traffic Department of Armour & Co., and R. R. Hargis of the traffic Department of Wilson & Co. (Tr. 1214.)

Mr. Davis: If you will just give us the names, we will admit that they would testify the same as Mr. O'Hara if

called to the witness stand, I see Mr. Hargis here, who else. (Tr. 1213.)

[fol. 859] Mr. Davis: Your Honor please, I think this would be as good a thing as any to introduce the composite exhibit made up by the joint conference committee consisting of representatives of carriers, the State Commissions of Indiana and Illinois and the shippers' representative, Mr. Oliver. This committee had 20 different conferences with shippers and state Commissions representatives and 118 questions were analyzed and disposition thereof made in this exhibit. (Tr. 1216.) Some 18 or more propositions that the Illinois Commerce Commisison raised were received too late to go in this big exhibit so a supplemental exhibit was made covering those points.

Mr. Slater: Mr. Davis, just so that it may be clear may it be understood that while this conference was held, a representative of the Illinois Commerce Commission was present thereat, there was no agreement made that the facts stated or purported to be stated in the Exhibit are facts that are accepted in full by the Illinois Commerce Commission. I do not want it to appear that we have agreed or that the Illinois Commerce Commission has agreed that these constitute all the facts or that the information set forth therein gets all the facts and that they have been approved by the Illinois Commerce Commission.

Mr. Davis: I think that statement is correct. You had a Representative.

Mr. Slater: Yes.

Mr. Davis: And this represents the judgments of the representatives you sent there. Whether it was complete or not they had the opportunity to say and I think their answer will show that it was not complete.

Mr. Davis: There is a foreword in the main exhibit that explains the entire situation. (Tr. 1217.)

[fol. 860] Mr. Walter: Would it not be fair to say that the shippers' position would be stated if a witness was on the stand as there shown, and that the carriers' position would be stated if a witness was on the stand as there shown?

Mr. Davis: I think that is correct.

Mr. Tholan: That would be the position I would take as representative of the Illinois Commerce Commission, but

in no way binding the opinion of the Illinois Commerce Commission.

Mr. Livinghouse: And the same is true of the Indiana Commission.

Chairman Campbell: It is understood that this is evidence and no one who comes to pass on it is bound by it. Will these be introduced without putting a witness on. It is pretty well self explanatory, is it not? (Tr. 1218.)

Mr. Davis: Yes, it is self explanatory.

Chairman Campbell: These 2 documents will be received then as Exhibits 83 and 84; 83 the large one and 84 the one made up because of some supplemental questions as explained by Mr. Davis; and they were thereupon received in evidence, marked "Exhibits 83 and 84." (Tr. 1219.)

C. W. GALLIGAN, recalled, testified as follows:

Direct examination.

By Mr. Davis:

At the hearing in these proceedings in May of this year, I introduced Exhibit No. 64 which showed the exceptions of certain commodities carried in my tariff, (Tr. 1220) and stated in response to an inquiry of Chairman Campbell, it was the intention of the carriers to increase all switching rates in the Chicago district to a basis of 3¢ [fol. 861] single line, 3½¢ for 2 lines and 4¢ for 3 or more line hauls, with certain exceptions as to waste material such as slag, cinders, quarry strippings, etc.; and some few other commodities in connection with which individual roads would make a statement for the record. I was requested to submit an exhibit showing the present rates, rates proposed by carriers and the exceptions to the general basis which was very hurriedly prepared, showing this information and contained a great many errors which I said we would carefully recheck in the exhibit and file a supplemental one at the next hearing. After more careful study, the carriers decided to rework the exhibit and file a new one, setting forth in greater detail the present rates, the proposal of the carriers as to what rates they desired to suggest under the general investigation, I. C. C., Docket

19610. (Tr. 1221.) The new Exhibit has been distributed and numbered 85 and the carriers desire to substitute this for Exhibit No. 64 filed at the previous hearing. Exhibit 85 is prepared in different form from the previous exhibit and shows the rates alphabetically by commodities. It shows the commodity, the railroads from and to, the present rates and the proposed rates, the proposed rates being in keeping with the suspension. The carriers propose to publish these rates provided we are permitted to increase the rates as previously proposed. Tariff authority for the rates is also shown. The Exhibit was offered and received in evidence, marked, "Exhibit 85, Witness Galligan," (Tr. 1222.)

Cross-examination.

By Mr. Slater:

Page 3 of this exhibit shows rates from 2½¢ to 3¢, applying on all commodities between all Chicago Junction stations from 2½¢ to 3¢ except as to refuse and cinders and these figures and items are exactly as they were given to us by the representatives of the roads whose figures [fol. 862] are shown. Some of the changes shown in the Exhibit are those proposed but not published and filed with the Commission at this time. (Tr. 1223.) This exhibit is set up in a different shape. It shows present rates and what the carriers propose in the next column and then following down the column the rates are prefixed, some by an "A" and those are rates under suspension in I. & S. Docket 2900, indicating the rates published, filed and suspended. The letter, "B", indicates the rates that are proposed to be published in keeping with the rates under suspension or in other words, what is proposed under the general investigation. The rates indicated by "B", as proposed, are before the Interstate Commerce Commission at this time under the general investigation but are not before the Illinois Commerce Commission in tariff form. The particular rates you mentioned in the exhibit are on wholly intrastate (Tr. 1224) traffic but we were asked by the Commission to file an exhibit showing what the carriers proposed and that is what we have filed in response to Chairman Campbell's request. I cannot make a general statement showing why some of these commodities are not pro-

posed to be increased or a general statement as to why those exceptions are made. As stated a moment ago, we called into conference with the committee at our office, representatives of each individual carrier in the Chicago District and asked each representative to check over his tariffs and state what rates were proposed to be increased and if there were exceptions, to indicate those, and they are indicated in this exhibit. (Tr. 1225.) I would like to have Examiner Faul give me a representative case to pick out an item and see if I can tell about it.

Examiner Faul: Well, I am asking for general informa- [fol. 863] tion from this standpoint. Suppose, when the Commission comes to decide this case it should determine to put all commodities under the Lowrey basis and it had no testimony on some one particular commodity that you propose to except, it would require some testimony and it seems to me we should have some before we can except any one particular commodity if you are going to have a general Lowrey basis for all rates. (Tr. 1226.)

Mr. Davis: I agree with Mr. Examiner, but then it would go to that basis unless there was evidence in the record to show that it should not go; and then that would depend upon your judgment, the Commissions' judgment, as to whether or not even that testimony was good enough to keep them in line.

The Witness (continuing): You will find in this Exhibit, Mr. Examiner, taking the first page, all commodities, with certain exceptions there is refuse, cinders—except iron and steel articles, except coal tar and coke, and then it says Chicago Junction—from connecting lines to industries present 2¢, proposed no change. That is on page 3 of the Exhibit. As to the exception of coal tar, coke, etc., you will have to ask for a representative of the railroads involved to state the reasons for the exceptions. But in many instances where you find no change between connecting lines and industries or between industries and connecting lines, it is a proportional rate to the junction point with another railroad (Tr. 1227), where the traffic is undoubtedly destined to a team track on another line. Team tracks do not always take the industries rates and they have a proportional rate to move traffic from a team track on one line to a connection on another that is destined to an industry or the re-

verse movement of that, originating at an industry on a [fol. 864] certain line moving to a connection and destined to a team track on another line. It is a combination rate. There are no 2 line rates that cover that. These rates they do not propose to change because the combination would be higher than the general basis, the so-called Lowrey basis; it would in all cases be higher.

Direct examination.

By Mr. Connell:

The item on page 3 proposing to except coal tar, coke and those other items shown in the left hand column was given us by representatives of the Chicago Junction Railway and representatives of other railways shown on that page. The heading is "All commodities not otherwise specified herein." (Tr. 1228.) And that is the way the tariffs read today, providing for certain exceptions, and with the exception of the commodities referred to by the Illinois Central at the previous hearing, the carriers are not proposing any exceptions to the Illinois basis.

Examiner Faul: Referring particularly to page 1060 of the record where the witness Furry stated among other things that Mr. Roberts testified the previous day regarding movement of tar from South Chicago to their plant on the Chicago & Illinois Western, and said that one of the carriers was willing to continue the present rate of 2½¢ where the Chicago & Illinois Western was the delivering carrier, and Mr. Furry said that the Illinois Central, if other roads desire to continue the rate, would be willing to join them and that it was his view that the rate should be continued. (Tr. 1229.)

Now why should that rate be continued. I do not see anything in the record that explains why carriers should want to make an exception on tar and that may be true on other commodities. (Tr. 1230.)

[fol. 865] Mr. Connell: Well, Mr. Examiner, as I understood the record at that time, the Illinois Central was the only carrier proposing to make an exception on tar and these other commodities.

Chairman Campbell: The point is. You propose a Lowrey basis; propose to increase all rates as to the Lowrey basis except where you make exceptions. If you make these ex-

ceptions without showing any reason can the Commission recognize those exceptions or should it not use such exceptions for the purpose of showing that you have not justified the increase on other commodities. That is the point.

Mr. Connell: I understood Mr. Furry to testify as to the reason why they wanted to make those exceptions.

Chairman Campbell: But there are several roads in there. It is not only the Illinois Central. The point is, are you going to rest simply on that statement of exceptions without showing reasons why either from a transportation or from a competitive standpoint (Tr. 1230), or some other standpoint, those commodities should be treated any differently than any other commodities.

Mr. Davis: I think I made this statement, we think we have proven that the 3¢, 3½¢ and 4¢ rates should go in as a general basis; perhaps something higher than that, but at least that and that should include all commodities. If there is any individual road having excepted commodities, it is for it or the person representing it to show that that commodity should be treated differently from the general basis. If there is not any such offer of proof made as to why a commodity should have a lower basis than the general one, then I think all the record shows is that it should have the general basis.

Mr. Slater: That may be the position taken by the car-[fol. 866] riers insofar as the general investigation and the Interstate Commerce Commission is concerned but insofar as the suspension case is concerned before the Illinois Commerce Commission, the burden of proof is on the carriers and your proposition would shift it back to the shippers.

Mr. Davis: No it would not. We have proved in this case that the 3¢, 3½¢ and 4¢ rates are the rates that ought to be applied to the district as a whole.

Mr. Walter: You mean you think you have so proved? (Tr. 1231.)

Mr. Davis: No, I say we have. Now, we have not that burden of proof.

Mr. Slater: That is, you expect the Commission to order those carriers who are willing to accept their present rates to increase them to 3¢, 3½¢ and 4¢?

Mr. Davis: If you want to have a uniform basis and go by the facts of record, yes. (Tr. 1232.)

Mr. Slater: Take the Chicago River & Indiana, under the designation "B". Between all their stations the present

rate is 2½¢. In the tariffs under suspension there was no proposal to increase that to 3¢ and are now asking that 3¢ be substituted or is your proposal to leave the 2½¢ rate as it stands today. (Tr. 1234.)

The Witness: That rate is not under suspension and we made no change.

Mr. Slater: You propose to leave it as it is. Now my question went to this, whether you propose now as a substitute for that which you have named in the tariffs under suspension the fact that in the general investigation the Interstate Commerce Commission is asked to make the rate 3¢.

[fol. 867] The Witness: Yes, that follows my previous statement in response to Chairman Campbell's request as to what we wanted; there were certain rates published and filed and under suspension and others that were not changed at the time. In response to the Commission's request, I stated it was the desire of the carriers to advance all rates within the Chicago District to the basis of 3¢, 3½¢ and 4¢, and here is one in those advances following that statement where we advance the rate of 2½¢ not previously advanced, nor under suspension to the 3¢ basis to make it uniform. (Tr. 1235.)

Only by checking Ex. 85 could you determine whether the suspended rate is 2½ cents and the proposed rate under the circle reference B is 3 cents and are before these commissions in these respective cases. I do not think there are many such, but it would be difficult to determine that because it sets them out in three ways: first, the present rates; the proposed rates indicated by an A, which are under suspension; and B is what the carriers propose in keeping with the general announcement that we desire to advance the rates to 3 cents, 3½ cents and 4 cents. (Tr. 1236.)

Chairman Campbell: Mr. Galligan, I think we will suspend your cross examination now until there has been a little more opportunity to examine the exhibit.

Mr. Walter: The situation we have just been going into, Mr. Commissioner, seems to me fully justifies our request for a cost study on the Chicago Junction Railway. Here they propose increases on the Chicago Junction without any cost study at all or any other evidence. (Tr. 1237.)

HENRY W. BYERS, called in behalf of respondents, was sworn and testified as follows:

[fol. 868] Direct examination.

By Mr. Gault:

Am freight traffic manager of the Chicago & North Western Railway Company, and with that company for 45 years, having been in its traffic department that entire period. Am familiar with the Chicago switching district and the situation therein, the rates and charges applicable, and have been for a good many years.

In 1910 shippers and carriers formulated a tentative agreement as to what should prevail within the proposed Chicago district, and after it was perfected it was turned over to six railroad representatives as a committee, of which I happened to be the chairman, to convert this understanding into tariff form (Tr. 1238), and it took us from May, 1910, until about August 1, 1911, before we succeeded in having the tariffs filed and effective. Since then I have served on various committees dealing with Chicago switching district, and beginning with the arrangement perfected in 1911, there was established a joint conference committee between shippers and carriers, and up to the war period Mr. Ingalls was chairman, at which time I was made chairman of one section. I have been in close touch with the switching district situation for a good many years.

Prior to August 1, 1911, there were as, I recall, 42 roads in the Chicago district, each publishing its individual switching rates. There were no joint rates applicable between one industry on one railroad to an industry on another. (Tr. 1239.) The individual tariffs were made by each road according to its local conditions. A shipper wanting to ship a car from his industry, served by a given railroad, to an industry served by another railroad, had to determine the road that would perform the service from origin point to destination point. He was supposed to be familiar with the routes over which cars moved, and was [fol. 869] required to add all charges of the various roads participating in the through service. An extremely chaotic situation existed; and a shipper not familiar with the car movement might discover thereafter that an intermediate

carrier was involved, and be obliged to pay charges of three carriers instead of two. Again, certain carriers published rates on marked capacity of the car; a switching charge, as an illustration, of $4.00 per car marked capacity, if not in excess of 80,000 pounds; in excess of that there was a penalty of $1.00 for each 10,000 pounds, and a man using a 100,000-pound marked capacity car, though not needing it, had to pay $2.00 more than if freight had been loaded in a 80,000-pound car. There were certain situations where the shipper had to pay the per diem when it was involved (Tr. 1240); in other instances for the empty movement.

The Chicago & North Western had its switching charges on a different basis at the 40th Street yard, where we interchanged with the Belt, than at Wood Street, the latter usually being 50 cents per car higher when cars went beyond 40,000 pounds, and perhaps 50 cents per car lower when under 40,000 pounds. These differing situations and conditions meant that the shipper could not figure in advance his total charges for the movement of a lot of freight. He did not know the capacity of the car he would get, and probably was not familiar with the channels through which it was customary to handle the business. (Tr. 1241.)

The situation created a strong desire for uniformity and it had much to do with the bringing about of the so-called Lowrey agreement, which later went into effect. The switching rates later becoming effective were built upon the rates already existing, and there was no real measure for them, each road having its own figures, which generally [fol. 870] speaking were different; and the desire for uniformity brought about the tentative agreement in 1910, and the desire to put various shippers throughout the district on a parity. This brought about the so-called all-commodity tariff issued in August, 1911, and which applied to all commodities without exception excepting coal, coke and grain. These rates were not based upon a cost study, as we had no method for cost figuring in those days. We had no Interstate Commerce Commission formula, such as today, for our guidance. Different roads would have had different formulas. There was no uniform method dealing with actual cost. (Tr. 1242.) We tried to harmonize as far as possible the rates then in effect, with many elements to reconcile; some believing switching

should be free, others that carriers were entitled to something, and carriers figuring that they should have a uniform basis that was compensatory. Out of all that grew the rate at that time 1½ cents per 100 pounds, 60,000 pounds minimum. (Tr. 1243.)

Since that time there has been a material change in the location of industries. In 1910 the greater interchange was through what might be today the downtown yards. Using our line as illustrative, our general interchange was at Wood Street, but it, like others, has moved its interchange yard to an outer location and now known as an outer yard. There have been changes in this respect and also in the development of industries in the Chicago district.

Since 1910 substantial developments have been made in the Central Manufacturing District and the Clearing District, the trend of industry development in the Chicago district having been towards the southern boundary of it (Tr. 1243); the Central Manufacturing District, South Chi- [fol. 871] cago, and the suburban stations that lie in the direction of Gary. As a consequence the average haul is much greater today than it was then. Again using our line, in 1910 we did not have our big grain elevator in South Chicago at 118th Street, with its capacity of 10,000,000 or 12,000,000 bushels. Consequently the grain that today goes through that elevator materially increases the average haul of all carriers participating in the movement of that grain. This is merely one example. That is the way you get large industries located, with heavy tonnage.

There has been a decided tendency for industries to develop or locate toward the outer rim of the district, largely because of labor questions and service which of necessity cannot be performed through the so-called downtown yards or via the hub of the district. (Tr. 1244.) With respect to so-called outer zones, the agreement of 1910 covered intradistrict switching between industries with individual sidetracks, applicable to all commodities excepting coal, coke and grain, located within the following boundaries: On the north side, Clybourn and Deering: that is, Clybourn on the North Western and Deering on it and the St. Paul; Mayfair on the St. Paul; Cragin on the North Western & St.

Paul; Galewood and Wilson Avenue on the St. Paul; 40th Street on the North Western; and then the south side facilities at 16th and Wood Street. Prior to the time the tariff went into effect the switching district was not beyond the points I have just mentioned. That was the local switching district of the carriers of the city of Chicago.

The territory immediately beyond was in the Milwaukee rate group, taking Rogers Park, Illinois, as an example. Desplaines was in that group, and then around westerly beyond 40th Street stations like Oak Park or Proviso, now in the outer zone, of the Chicago district, were then in the [fol. 872] Aurora group, and Aurora was the 110 per cent point with respect to rates to and from Eastern territory. (Tr. 1245.)

And to bring about a Greater Chicago proposition, the Northern carriers increased the scope of the territory on road-haul traffic, which became known as the "outer zone." As to local Chicago intradistrict traffic, the so-called outer group or zone was not included in the adjustment of the former, which was on the basis of 1½ cents, 60,000-pound minimum. After the establishment of the $9.00 rate between the small groups, certain industries requested inclusion therein, but the carriers under the rate basis felt it was not possible or consistent for them to extend the $9.00 rate and increase the zone by inclusion of the outer group without additional compensation. We made certain adjustments with shippers, taking the Greenwood line as an example, with the understanding that the rates between two points within the Chicago district, plus ½ cent per hundred pounds, minimum 60,000 pounds, would govern thereafter to that line.

A very bad situation remained in the part of the territory not covered by the so-called 1½ cent rate plus. (Tr. 1246.) Taking Jefferson Park, just before Mayfair, on our line, as illustrative, which would be typical of all other stations not provided for under the 1½ cent plus, a shipment from South Chicago to Jefferson Park, when it came to the rate, could take our Chicago-Des Plaines rate or the Chicago-First station beyond Des Plaines rate, absorb the switching charge from South Chicago and produce one result; and from a point in Indiana, beyond the district, to Chicago, you could take the rate and figure on the absorption by the road-haul carrier of our terminal charges, and that would produce another result from South Chicago to Jefferson

Park; or a different result, perhaps, from Chicago to May-
[fol. 873] fair, by adding Illinois distance rate from May-
fair to Jefferson Park.

We had to figure rates many ways to determine the tariff rate properly applicable, with nothing consistent about it, and no one could claim it to be a desirable arrangement. We wanted to get away from it, but we have never been able to do so and produce something that was satisfactory to the carriers, because if so, it would not satisfy the shippers.

Speaking of the original 1½ cent, 60,000 pounds minimum, shippers wanted it extended to include points in the outer zone. (Tr. 1247.) We would like awfully well to do that and provide an all-commodity rate on a uniform basis, and might well consider the proposition provided we were given a compensatory basis, one at least no lower than that which we are asking of the Commission today. I think it should be somewhat higher, but that is for the Commission to decide. Such uniform basis would apply throughout the district, as indicated on Ex. 15. The distinction in the Chicago district between the inner and outer zones, so-called, in the application of industrial rates within the Chicago district was that, with some minor exceptions, practically the inner zone of the north side roads and the inner and outer zone of the south side roads were to be embraced in the district. (Tr. 1248.) It is my thought that we should take the inner zone of the north and south side roads and the outer zone of the north and south side roads and have a uniform district; and throughout that, apply the rates we have proposed as a minimum, at least for movements between two industries having their own facilities. It would simply be an extension of the original plant to include the outer zone, but heretofore excluded, but which has either been provided for with joint through rates or where it did have such through rates they were on a ½ cent plus basis. (Tr. 1249.)

[fol. 874] Cross-examination.

By Mr. Walter:

The Lowrey basis of rates has been in the interests of shippers and carriers, and naturally so when we consider the commercial growth within the district because of the adjustment. From that standpoint the principles of that

basis were good for both carriers and shippers. But from the standpoint of compensatory rates I do not think our rate adjustment has kept pace from 1910 to the present. (Tr. 1249.) The tentative agreement of 1910 becoming effective in 1911 went along without change until 1918. The $9.00 rate for a two-line haul reflected in those days about a combination of the normal local switching rates, just about the combination. At that time we had rates of $4.00, $4.50 and $5.00 per car. If that rate today, based on existing local rates, the two-line haul would be $30.00 per car. We have not kept pace with the cost and the development, and even though the $9.00 basis was not satisfactory to the carriers, the shippers were demanding a "Greater Chicago" and we were asked to "take the thin with the thick" whenever we asked for some consideration. At times we were told in negotiations that we were entitled to compensation, but we could never quite make the grade. There was always delay and something would happen. This is not a new story, of course, and I do not want to go into it in too great detail, but what I mean is this (Tr. 1250): We have been trying for many years to get this structure on a more reasonable basis for the carriers and we have always been just shoved back. This rate basis was made in 1910, carried until 1918, and in 1928 has not kept pace with changed conditions, not only in the immediate territory but the country as a whole, as to costs and everything else. It is a stiff dose for the railroad to take when they constantly lose [fol. 875] money on the handling of this terminal business.

In 1922 the 10 per cent reduction did not change the 2½ cent rate because of the disposition of fractions. (Tr. 1251.) The railroads were primarily developed for line-haul traffic and did not have in mind a switching district. When the Chicago & Galena Union was built the whole operation was at Canal and Kinzie Streets. And as it is today, when industries located they selected originally the line that they expected to patronize and located close to it for economy of operation and depended upon an inbound supply of raw material, choosing the line that would bring that raw material to Chicago. Taking grain elevators, as an example. In 1862, using grain movement as illustrative, our grain elevators for the old Chicago & Galena Union, now Chicago & Northwestern, stood about where Butler Brothers are located, over near the Union

Depot. (Tr. 1253.) That was Grain Alley; all grain centered there, but it could not be carried on in Grain Alley today. That condition, along with the establishment of the Lowrey basis, has resulted in industries locating anywhere in the switching district where land and labor were available, where they could be closer to the breakup yards of the carriers; but I do not know whether that has resulted in economy to the carriers. One of the main ideas for the development of the Chicago district—and there is no question but what Chicago has very greatly benefited by the Lowrey basis of rates—because generally speaking an industry can locate at South Chicago or Des Plaines or Greenwood or Oak Park or anywhere within the district, with some exceptions; but generally speaking it matters very little within the Chicago district where an industry locates so far as the rate adjustment is concerned. (Tr. 1254.) If we can harmonize this throughout it will still be better than before, but in so far as the service is con- [fol. 876] cerned, the carriers of course have had to extend themselves very considerably in the later years, particularly since the development showed greater tonnage with a tendency toward greater length of haul, and for the carriers to perform the same thing today that they were able to do in 1910 they have had to extend themselves. (Tr. 1255.) Originally our yards lay close to our passenger station, but with the congestion and growth of business and the development of the Lowrey basis, those yards were extended outward, and now our principal outer yard for road haul is at Proviso and our interchange yard for Chicago district business is at 40th Street. (Tr. 1255.)

The development in location of industry in the outer district of Chicago has not brought those industries closer to our break up yards or makeup yards on our outbound business. It would be farther away, because the development has not been in that direction. As stated before, the development has been in a southerly direction, south of the downtown district and toward the Gary district. I do not know that the plussing of the Lowrey basis by our road to the territory I have mentioned has turned industries away from our rails and resulted in longer hauls than when the traffic had to go to or from industries on the North Western. That ½ cent plus is applicable only on intradistrict movement. It does not apply on road-haul traffic. (Tr. 1256.)

As to an industry desiring to secure its raw material in the Chicago district and located on our line, would be at a disadvantage to the extent of ½ cent in the territory where this plus charge exists. (Tr. 1257.)

We acquired the elevator at South Chicago in 1912 or 1913. We bought the property, built the elevator and own the rails, but the elevator is leased to someone. The in- [fol. 877] dustry rails to the elevator do not go with the lease, and we maintain the industry tracks for the elevator. Industries generally on our line furnish their own industry tracks on their property (Tr. 1258), which is generally true in Chicago, that the industries furnish their own tracks.

With reference to the outer zone of the Chicago & North Western or St. Paul, I believe if the measure of the rate, the switching rate, in Chicago is reasonable, it is far preferable that a single rate apply in the district; and if we are accorded a rate not lower than that before the Commission now, we should make it a flat basis applicable throughout the inner and outer zones. (Tr. 1259.) If we do not get the advances in the rates I would not subscribe to taking the plus off. My objection to one switching charge throughout the entire district is that the present rates are too low, but if increased to a proper basis, that is, a compensatory basis, then it should be uniform, but on a non-compensatory basis we do not want to spread our losses. (Tr. 1260.) If an analysis of the cost study should show that the present charge under the Lowrey basis is reasonable and no increase justified, I would not be willing to abolish the plus charge until I was satisfied that the cost study covered our cost and enabled us to proceed on a compensatory basis; and one reason we have not been willing to do what you suggest is because we realized we were not making money on the business we were handling. To increase the scope of the territory and increase the business would naturally increase our losses.

Mr. Walter: But now, if an analysis made of a cost study conducted by your people showed that you were getting enough money on the rates of 2½ cents or 3 cents, would you not say that your arbitrary ought to come off? That [fol. 878] is, as being unfair to you and unfair to the industry already on your rails? (Tr. 1261.)

A. We would much prefer to see a uniform basis if we can harmonize conditions and maintain a proper relativity of rates; and an adjustment of rates between two points

in the district may have a bearing on the rates from a point within to points without. This must be taken into consideration. (Tr. 1262.) The switching revenues of all railroads in the District is very small compared with the revenues of the railroads on traffic they haul coming into or going out of Chicago. (Tr. 1262-1263.) The policy of a railroad is to be helpful and it is a partnership proposition if the manufacturers along the railroad do not thrive, obviously that railroad has no business to handle. (Tr. 1263-1264.)

Cross-examination.

By Mr. Brown:

The Chicago Northwestern switches cars of grain in and out of our elevator at Irondale. Our length of haul varies, Mr. Brown, depending on what we have to do with the car after we get it, whether we take it direct to the elevator or into the yard and hold it, shunt it around, etc.; we have 19 miles of track in that yard and the distance from the Indiana Harbor Belt point of interchange to the elevator may not be more than a few hundred feet, probably about 500 or 600 feet, and whether we run the car around the whole 19 miles, depends upon what you tell us to do with it, but the distance between the Indiana Harbor Belt point of interchange is less than a quarter of a mile, that is, it might be. (Tr. 1267.) But we have to shunt cars around that we cannot run right up to the elevator. I mean that we cannot, the minute we get a train of grain from a connecting carrier, either the Indiana Harbor Belt or the Belt, move the train load and run it up to the elevator [fol. 879] for unloading, though we often do. If the elevator needed cars or wanted the particular grain, we would, but that would displace cars standing in the yard, setting them out of turn. We do not necessarily handle cars in the order in which they are received. And presumably we would not have 19 miles of track at the elevator unless we had 19 miles of business to perform around it.

Redirect examination.

By Mr. Gault:

As to what I have said regarding the plus territory, I know that all of the railroads except the Burlington are

agreeable to going along with that sort of a proposition. I do not mean to say the Burlington is not agreeable, but it wants a little more time to look into it.

Recross-examination.

By Mr. Walter:

Mr. Walter: Well, will someone make their position known during the course of the hearing.

"A". I assume so.

Mr. Davis: Yes.

Mr. Walter: All right.

The Witness (continuing): The Burlington having so small an interest involved, I think we will get an affirmative answer, I do not doubt that at all. (Tr. 1269.)

E. F. Rummel, called in behalf of respondents, was sworn and testified as follows:

Direct examination.

By Mr. Davis:

Am assistant general manager of the Chicago, Milwaukee, St. Paul and Pacific Railroad, at Chicago, have had 33 years of railroad experience, practically all with the Milwaukee and have had experience in the terminals at Minneapolis, Milwaukee and Chicago. Have been a division superintendent on different divisions of the Milwaukee Railroad. (Tr. 1272.) From my experience and observa- [fol. 880] tion, a car would be more likely to receive a greater amount of damage while in the yards than when out on the division. In terminals, switching of every train is required to classify cars for different districts, freight houses, team tracks, industries, and cars going to connecting lines. Every car is rehandled several times and the same is true of cars loaded at industries, freight houses, team tracks and deliveries from connecting lines. They receive more handling than a car moved in a road train delivered at a way station, team track or industry. There is more opportunity to damage a car in a terminal where it receives so much handling. The movements are faster, an engine will handle a

cut of from 25 to 30 cars, while on the road in setting them out, they handle but 2 or 3 at a time. In terminals they have to kick the cars in, on the road they shove them in with the engine. In terminals they work a great deal faster because it is necessary to make connecting line deliveries at certain times for certain trains. (Tr. 1273.) When a road train is delayed, it is necessary to work faster in the terminal to make proper delivery of perishable freight to freight houses or to foreign connections. (Tr. 1273.)

The opportunity in the terminal for side swiping is greater than in road haul movement. A switch crew foreman will take a cut of 30 cars, classifying them on 10 different tracks, probably moving them on 5 different tracks at the same time. Sometimes, misjudging the speed of the car he cuts off, another one is cut off and the first is not in the clear and so he side swipes it; which happens a great many times. (Tr. 1274.) We keep a record which shows there is more opportunity for damage to equipment while in terminals or terminal service than there is while on the road. We keep these records to show all damaged cars, [fol. 881] how they are damaged and who is responsible, in connection with the system of the Milwaukee road, in regard to rough handling, the object being to locate where the rough handling occurs, who was responsible and for the purpose of correcting any bad practice that may exist. The Milwaukee road has its system divided into 4 districts with a man in charge of each district, whose business it is to find out where the rough handling, if any, occurs. (Tr. 1275.) We have district meetings and division meetings of superintendents and train masters, yard masters, train men and engine men are invited to attend and the rough handling of freight cars is discussed and figures produced. In the assignment of repairs to cars, it is divided in two places, the yard or terminal and the road, being separated between road haul and terminal. In that connection, we have 4 large terminals, at Kansas City, Chicago, Milwaukee and Minneapolis, and a lot of small terminals out on the road. I have the record for July in the Northern district which is comprised of 6 road divisions and 1 large terminal, the Twin Cities, (Tr. 1276) which shows that there were 10 cars damaged in the Twin Cities terminal and 3 in the small terminals or 13 as compared with 2 damaged on the road. The record for the middle district, consisting

of 7 divisions and 1 large terminal, Milwaukee, Wisconsin, shows for the month that 40 cars were damaged at Milwaukee, 3 at Madison, 7 at La Crosse, 3 at Beloit, making a total of 53 in terminals for that month compared with 27 cars on the road. The Southern district is made up of 7 road divisions and 1 large terminal, Chicago. The figures I am giving are for the month of July, 1928, the record for July shows 110 cars damaged in the Chicago Terminal, 15 in the small yards such as Savannah, and Nahant, 9 at smaller yards on the Iowa division, 7 at Kansas City, and 5 at Sioux City terminals or a total of 146, compared with [fol. 882] 28 on the road. When I say damaged on the road, I mean between terminals. They are damaged on a road train between the terminals. I do not have the number of cars not damaged at all. Now as to the lines including everything West of Mobridge, South Dakota, to the Coast, (Tr. 1278) the figures for July show 9 cars damaged in terminals, those are the smaller terminals, as compared with 29 damaged on the road. For the month of February, March, April, May, June and July, 1928, the records show a total of 126 cars damaged on the road in the Southern district, (Tr. 1279) for which Chicago is the main terminal and 1,026 damaged in the terminals during the same period, giving a percentage of 89.7 damaged in the terminals against 10.93 damaged on the division. For January, 1928, 252 cars were damaged in the Chicago terminals against a total of 300 damaged on road haul in the Southern district. The Southern district includes the Des Moines division from Des Moines to Spirit Lake, Herndon and Madrid, practically covering Central Iowa. (Tr. 1280.) The Dubuque division, the Illinois division, the Iowa division, the Kansas City division, Western Iowa and Eastern South Dakota division and Terre Haute division. There were 288 cars in the month of February requiring repairs in the Southern district, of which 230 were damaged in the Chicago terminal. (Tr. 1281.) For March, 184 cars were damaged in the Southern district, 156 being in the Chicago terminal; 173 in April, 134 being damaged in Chicago; 147 in May, 99 of which were damaged in the Chicago terminal. (Tr. 1282.)

I have no figures showing the damage to these cars or the number of cars in the cost study that had to go on the repair track while carrying a load but all the cars I have mentioned as being damaged were on the repair track.

Chairman Campbell: We adjourn at this time until 9:30 [fol. 883] o'clock tomorrow morning, September 19, 1928, daylight saving time. (Tr. 1284.)

Hearing reconvened at Chicago, September 19, 1928, at 9:30 A. M.

C. W. GALLIGAN, recalled, testified as follows:

Cross-examination.

By Mr. Walter:

The first line in Exhibit No. 85 refers to the Chicago Switching District as shown on the map. (Tr. 1286.) The first line says "switching rates in the Chicago Switching District." That is the district as defined in the map and the tariff, and, "and between points in the Chicago and Chicago Heights District," between Chicago and Chicago Heights, because those rates are involved in the I. & S. Docket. The "Chicago" as 1 point is the Chicago Switching District. (Tr. 1287.) There is no difference between the Chicago Switching District and the Chicago District insofar as my exhibit is concerned. Those two terms are interchangeable and embrace the territory within the boundary lines of the district as defined on the map and as set out in our tariff. There is no real definition for the balance of the district, although it is commonly referred to as the Chicago District, including Gary and points outside the district. (Tr. 1288.)

My exhibit No. 85 presents in the record a statement of all rates less than the Lowrey basis which are proposed to go to the Lowrey basis or where any change is to be made in the rates less than the Lowrey basis and page 3 of the exhibit for example, covers all commodities not otherwise specified in this exhibit and insofar as the Chicago Junction Railway is concerned, the first exception is "except re- [fol. 884] fuse and cinders", and it applies on all commodities except those items between any points on the Chicago Junction where the present rate is 2½¢. (Tr. 1289.) In some respects, I am testifying in behalf of all of the respondents in the investigation but in this case, the Commissioner asked me to furnish a statement showing

present rates and the exceptions and what the carriers proposed to do under the general investigation. This information was compiled by representatives of various lines in the Chicago district, made up in statement form and turned over to the Chairman after instructing just how it should be prepared and it was then printed and placed in the form of an exhibit. I did not personally make up these exhibits. This exhibit I presented in behalf of the committee of carriers and the exceptions claimed are not advocated by all carriers (Tr. 1292), and I am not attempting to give reasons for those exceptions. The cost study does not take out of the general cost study certain commodities which some carriers propose to carry on a lower rate because it costs less to move them than it does the general commodities included in the cost study. The cost study covers all commodities. (Tr. 1293.)

Mr. Walter: My question is this, are you able to say that rates less than the Lowrey basis may not be in many instances due to the fact that the traffic would not bear so high a rate as the Lowrey basis.

The Witness: How's that?

Chairman Campbell: Well, we have a question before us on the record now, let us have it answered.

The Witness: I do not know the reason for carrying rates lower than the Lowrey basis, whether it was because they thought the traffic would not stand it or whether they thought the costs would not justify a higher basis or not; but I do know from my own handling of these matters in the Chicago district that it was largely a question of taking [fol. 885] out some particular commodity and favoring some particular shipper. That is my understanding of it. It was favoring some particular movement. (Tr. 1296-1297.)

Mr. Walter: In other words, the carriers in this district have for years and years maintained rates for the sole purpose of favoring the shippers on a particular commodity, that is your answer as I understand it. Is that a fair statement of your answer. (Tr. 1297.)

The Witness: No.

Mr. Walter: Then wherein is it wrong?

The Witness: I said I knew from my own general knowledge that when these rates were made they were made for giving somebody a little better than the general basis, and

when it is lower than that it is favoring one particular movement or one particular shipper. (Tr. 1298.)

Mr. Walter: So that as I understand it has no reference to the fact that it costs less or that the traffic could not stand the Lowrey basis, but it was solely for the purpose of giving the shipper of that particular commodity a lower rate than other shippers in that particular district. Now is that your answer, Mr. Galligan? (Tr. 1298.)

The Witness: I do not know anything about what it costs, because as I stated before, I know of no cost study having been made, and I do not know anything about what the traffic would bear.

Mr. Walter: If you do not know those essential facts, why do you say that the purpose of the carriers was to give an advantage or a favor to a particular shipper?

The Witness: The argument may have been offered that it was about all that the traffic would stand, but without a cost study, how would they know that was all the traffic would stand. (Tr. 1299.)

[fol. 886] The rates less than the Lowrey basis are on a different basis than the general one. I did not say I thought that was done to favor a particular shipper. I did not say I thought it was done to give a more favorable basis. I said the action spoke for itself. It is a lower basis than the general basis. The result is that that particular shipper has a more favorable rate than the other shippers, but I am not prepared to say those exceptions are justified by what the traffic would bear or upon the cost.

Mr. Walter: All right, then I move to strike out all of his preceding testimony.

Chairman Campbell: Well, then since you brought it out yourself, I think it will have to stand. (Tr. 1300.)

The Witness (continuing): The first item under Chicago Junction proposed to change rate from 2½ cents to 3 cents, but the next line, from connecting lines to industries, there is no change. That rate is only a part of a through rate. (Tr. 1301.) These are in the nature of proportional rates, which apply in connection with originating at or loaded on team tracks or loaded on team track of another line and then moved to an industry, etc. They make a combination charge in that case, a combination of the two charges. These charges are all published. (Tr. 1302.) Team tracks

are not covered in the tariffs. They are not points on the general Lowrey basis. They are not open on the general basis. (Tr. 1303.) Illustrating this movement, where the 2-cent rate from a connecting line to an industry on the Chicago Junction would be applied: If a car is loaded on a team track on another railroad in the Chicago district, say the Pennsylvania, and destined to an industry on the Chicago Junction, there would be the charge of the road that originated the car on its team track. (Tr. 1303.) It would [fol. 887] move it to the Chicago Junction and the latter would move it from its connection with that road to the industry, and the Chicago Junction Railway's charge in that case is 2 cents per hundred, and it is not proposed to change it. (Tr. 1304.) Under the Lowrey basis there are no joint through rates from a team track on one line to a team track on another line. Some of the team tracks are open for general use and some are not, and some public team tracks are probably under the general basis, but the general rule is that team tracks are not covered by the Lowrey basis. Movements to and from them are on combination rates. A team track is owned by the railroad and built principally for its own use. It does not care to open it up for general use, and those that are open depend on the railroad whether they want to handle team track business or not. I cannot state what lines or carriers in the district have their team tracks open. There are a great many of them that are available for the handling of this particular class of traffic, but how many I could not say.

The Chicago River & Indiana and the Chicago Junction are separate corporations. There is some connection between the ownership, but what it is I do not know. (Tr. 1305.) They are both members of my bureau, but each has the same representative. (Tr. 1306.) As to the Chicago Junction, the item "From all Chicago Junction stations"—or "Between all Chicago Junction stations and all Chicago Junction stations," is a local charge of that railway of 2½ cents. The second item is from connecting lines to industries on the Chicago Junction, and the next is between connecting lines and team tracks. That charge is now 2 cents and it goes to 2½ cents. The word "between" should be read as to each of the three items opposite the Chicago Junction and opposite the Chicago River and In- [fol. 888] diana. I had no instructions to increase these

rates. (Tr. 1307.) But to answer Commissioner Campbell's inquiry, the Chicago switching district lines and Chicago Switching Committee in meeting convened authorized me to say that the carriers in the Chicago district desired to increase all the rates to the basis proposed. I cannot give the date of the meeting, offhand. (Tr. 1308.) The meeting of these committees was during the progress of the former hearing in this case, and I think around May 15, 1928, somewhere around the second day of that hearing. (Tr. 1309.)

Mr. Walter: Now, then, at that particular meeting was any representative of the Chicago Short Line present?

Mr. Davis: That is objected to.

Chairman Campbell: I think you have got a right to do this. I think you have got a right to inquire as to whether it was unanimous and if it was not unanimous, what carriers objected.

A. No, sir, they were not present at the meeting, but were consulted immediately after the meeting. I do not remember whether the Baltimore & Ohio Chicago Terminal was represented. I cannot remember all roads, but just happened to know that the Chicago Short Line was not present at the meeting. Let me explain. Under the rules of our organization, when we call a meeting of member lines, a line sends a representative to it, who is empowered to act. He comes to the meeting understanding that he is authorized by his company to speak for the railroad.

Chairman Campbell: Well, now, there are some things that I want to understand, following up what I asked before and the specification of these exceptions. I did not understand that there is any organization of yours which binds irrevocably the members of that organization. Is there?

The Witness: Absolutely not, Mr. Commissioner. That [fol. 889] is thoroughly and clearly defined. There is nothing that prohibits any line from taking any action whatever it sees fit to take. (Tr. 1311.) Our organization is for the purpose of establishing and maintaining uniformity in the rate adjustments, but there is nothing to prohibit any line from taking a different stand in a meeting or previous thereto or taking independent action, and it makes no difference who represented a particular carrier at the meeting, whether they were subordinates or executives; it would be

still free after such meeting, if it saw fit, to appear here and present and urge a different action than that which was taken at the committee meeting by their representatives. (Tr. 1312.)

Chairman Campbell: Now, how does that become material, Mr. Walter, as to who was there and what they did?

Mr. Walter: I am trying to find out, Mr. Chairman, because my information is that a number of these lines was not present.

Chairman Campbell: Well, it is not material, I think. Supposing there were a number who were not there and a number who were there, who afterwards took a different action. What difference does that make? We are interested first in knowing whether or not Mr. Galligan speaks for all of these lines in an authoritative manner, and he says he does not.

The Witness: As to the exceptions.

Chairman Campbell: Well, I know. But my statement was all-embracing. Then, as to whether or not there are lines here pressing these exceptions before us and are going to follow that up by proof as to why those exceptions are made.

Mr. Walter: I think the burden is on them, just to show why the rates should be increased.

Chairman Campbell: I grant you that. I am not arguing that at all. As you recall, yesterday I asked Mr. Galligan and Mr. Davis if they were simply going to present this [fol. 890] and say "We want to make these exceptions" without any supporting testimony. (Tr. 1313.) It seems to me if that were done we could either say, "There is no supporting testimony to these exceptions and therefore they should not be allowed," or could say, "Well, they come in here and present exceptions without explanation and we will use that as evidence showing that there should be no increases on any commodities." Those are risks the carriers themselves are taking.

Mr. Walter: For years these exceptions for particular movements under certain circumstances have borne a certain rate. There was no proposal in the tariff under suspension to increase those rates. It was only when the inquiry came from somebody as to the fact that there were exceptions that the question came into this record, and now they say they desire to wipe out those, but offer no evidence whatever as to why they should be wiped out or the rates

increased other than what Mr. Galligan has stated and Mr. Davis' statement yesterday, that for cost-figure reasons they should go up to the general basis; that is their sole justification (Tr. 1314), and we think the question before you is not whether there should be exceptions, but, Should the rates be increased to the basis they propose, whether they are exceptions or whether they are regular Lowrey basis rates, and that is the theory on which we are proceeding with our case. (Tr. 1315.)

Chairman Campbell: Yes, but is there not a burden upon the shippers when they come in here? We have a general investigation here involving all these rates, whether under suspension or not, that is all interstate rates as far as the Interstate Commerce Commission has jurisdiction. Carriers come in with a cost study which covers all commodities, which they will argue undoubtedly justifies the increase of all commodities. That being so, is not the shipper taking [fol. 891] a little risk if he sits back and says the carriers have not justified those increases and therefore we shall not make any showing as to why these commodities should not be excepted.

Mr. Walter: If you will allow us to present evidence as to each of these excepted movements we will be very glad to do so. It will take us months to do it, however, because as you see here, each one of them is a separate rate case in itself.

Chairman Campbell: Well, perhaps, but as I see it——

Mr. Walter (continuing): Just a moment further, if you will bear with me, Mr. Chairman. For example; you have only recently passed upon the slag movements and denied them the right to increase the movement above $8.10. Here they propose to put slag on the regular Lowrey basis. (Tr. 1315.)

Chairman Campbell: Yes, and you could very easily put a witness on to show that the value of the commodity is so-and-so and what the traffic will bear, and things of that sort, without taking months to do it.

Mr. Walter: Well, there are literally hundreds of cases here that we would have to deal with.

The Witness: There are not any hundreds of exceptions in the exhibit, Mr. Chairman.

Mr. Walter: I think by going through this you will find many cases that you do not even show, and that is another thing I want to ask about.

Chairman Campbell: Of course you have your cost study and you are going to claim that your cost study does not justify increases.

Mr. Walter: That is right.

Chairman Campbell: And you are going to claim that as to exceptions, there has been no justification by the [fol. 892] carriers which bears out your cost study, and all those things. Those are matters of argument. (Tr. 1316.)

Mr. Walter: But they are proposing, Mr. Chairman, to increase exceptions to the present basis where they have made no cost study at all, many of them where no cost study has been made, and no information at all has been furnished bearing upon the matter.

Chairman Campbell: Of course, I am not prepared to say how far the cost study has gone; and that is one of the things we will have to determine. (Tr. 1317.)

The Witness (continuing): On page 50 is the item for the Chicago & Illinois Western which says: "Tar, coal, in tank cars, etc., all stations on the Chicago & Illinois Western to all stations thereon, $9.00 per car; no change. Industries on the Chicago & Illinois Western to industries on Chicago Short Line, 2½ cents per hundred pounds; no change." (Tr. 1319.)

Chairman Campbell: Suppose there was no Lowrey basis and we were starting here to fix just and reasonable rates on all commodities. Would you not present some justification for a difference on coal tar, say, and iron and steel?

The Witness: I would not think we would have to do that; if we had a rate and there was no change in the rate that was in effect at the time. But if we proposed to increase that rate, then I would think the carriers should be expected to justify the increase. We do not have a whole raft of exceptions here that would destroy the Lowrey basis. We have very few exceptions to the general rule, considering the volume of traffic moving in the district; the traffic moving under the exceptions is very, very small.

Chairman Campbell: As long as you got these exceptions [fol. 893] do you not think that we ought to have a witness who will give us the reasons why they are making these

exceptions, and if you do not do that does that not leave the inference that Mr. Walter was apparently endeavoring to draw a little while ago? (Tr. 1320.)

The Witness: I think that is a question for Mr. Davis, the attorney, to answer, but if the Commission desires, undoubtedly we could get representatives of the different lines here that are making the exceptions. (Tr. 1320-1321.)

Chairman Campbell: I do not want to request it. I am simply asking if the carriers are satisfied to leave their case in that shape.

Mr. Davis: At the hearing in May we made the statement that it was our intention that everything under the Lowrey basis, every commodity, should be raised to the basis that we proposed, and if there were any exceptions the individual carriers would have to take them and give their reasons therefor. (Tr. 1322). We, representing all the carriers here, are for the uniform basis without exceptions, as far as the offering of any proof is concerned, but in all the committee hearings it has been said if any road has any exceptions to the basis proposed, that the hearing of the case is on or will be on, and that it could go in and explain why it thought its commodity "should be something less." (Tr. 1322.)

The Witness (continuing): As to new cars on their own wheels, moving from car shops to connecting lines, we propose some increases. At the previous hearing I stated there would be some exceptions on waste material and possibly on railway equipment; that the latter moved between railroads and was a matter entirely between them in the district and there might be some exceptions in connection with that particular commodity. Some of the carriers pro-[fol. 894] pose to increase their present rates relatively with the increase on other commodities; that is, relatively with the proposed increases on other commodities, 3, 3½ and 4 cents. (Tr. 1324.) There is no tariff charge for empty cars returned, that is another matter entirely. The railway equipment here means new equipment. (Tr. 1324.) The Indiana Harbor Belt and the Belt Railway, where they act as intermediate carriers, have a charge for the return of the empty car. In some instances they charge for the return of the empty car the same as the rate on new equipment in the district, that is, so far as box and refrigerator

cars are concerned. (Tr. 1325.) The Indiana Harbor Belt has a $2.70 charge for the return of an empty freight car. That is a matter between the railroads. It has nothing to do with the cost study, no connection whatever with the cost study. This is the return of an empty car from one railroad to another where it has been in road-haul movement. (Tr. 1325-1326.)

I do not know whether the charge for the movement of a new car is the same as a charge on an empty car returned by either the Belt Railway or the Indiana Harbor or other carriers here to the owning railroad. The movements are entirely separate and distinct. There is no connection between the movement of a new car, passenger coach, baggage car, or empty box car from a car building plant to a railroad and the empty car moving between railroads where there is an intermediate carrier which has to perform the service and is entitled to some charge for that. (Tr. 1326.) The charges of the different railroads for the return of empty cars are published in the tariff. On page 29 of the Exhibit, there are various rates proposed on ice, some of which are not to be changed and others which [fol. 895] are to be increased and there is considerable difference in the rates and the Rock Island and the Illinois Central are the only two lines named on that page subject to the cost study, (Tr. 1327.) but the Illinois Central includes the Chicago & Illinois Western. (Tr. 1328.) It might be possible that on those particular roads studied during the period the study was made, there was not a movement of one particular commodity but that would not change the general situation because we consider the roads on which the study was made as representative of the district as a whole and to pick out one commodity that did not happen to move during the period the cost study was made would not, I think, change the conditions at all, because we are working on averages. (Tr. 1329.) Beginning with page 52 of the exhibit and well on towards the end covers the Elgin, Joliet and Eastern and for page after page, no change is proposed and the reason they were included is that that road was one of the cost study roads and we were asked to make and file a statement showing exceptions to the general basis. These rates in most cases are higher than the general basis applicable in the Chicago district. That road does not subscribe to the Lowrey

agreement. We have included roads in the so called Chicago Industrial district, covering the Elgin, Joliet & Eastern. (Tr. 1330.) And we were asked to make a cost study and naturally we show here the same in ormation that we have shown in connection with the other railroads as to any exceptions to the general basis. The cost study on the Elgin, Joliet & Eastern was not entirely restricted to switching business. (Tr. 1331.) I do not know of any agreement or suggestion on the part of shippers or representatives of Commissions that the cost study on busi-
[fol. 896] ness outside of switching movements should be merged in the cost study of the lines in the switching district. We made a cost study of the Elgin, Joliet & Eastern but did not confine that study to the switching movements nor segregate the cost study and separate switching movements from the line haul movements. (Tr. 1332.)

There is no proposal to put the Elgin, Joliet & Eastern Railroad into the switching district or beyond where it is now. (Tr. 1333.)

On page 55, aqua ammonia, we show Gary and South Chicago on one hand and Gary and South Chicago on the other side. That is the way the item is published. It would be between Gary and South Chicago or between Gary and Gary and points there. It is a double barrel item between Gary and South Chicago and it is an inter-territorial movement as I understand it. (Tr. 1334.)

Chairman Campbell: I would like to understand about the Elgin, Joliet and Eastern movement. From questions asked across the table, it would seem to be the claim that the Elgin, Joliet & Eastern does not do any switching. Is that right?

Mr. Allen: That is the claim here.

Chairman Campbell: If the Elgin, Joliet & Eastern does not do any switching, taking it on iron and steel, for instance, their rates would be under investigation under Docket 17000 and now would be controlled by the Jones & Loughlin scale which is in effect. Is it moving at a rate lower than the Jones & Loughlin scale?

Mr. Walter: It certainly is.

Chairman Campbell: If so, why? (Tr. 1335.)

Mr. Walter: I understand Mr. Allen as attorney for the Elgin, Joliet & Eastern Railroad claims there is no switch-
[fol. 897] ing movement by the Elgin, Joliet & Eastern and

yet, there is a large volume of that road's traffic in the cost study so mingled that we cannot separate it.

Mr. Allen: Those rates are not published as switching rates; that is what I mean.

Chairman Campbell: It is apparently moving at a rate lower than the Jones & Loughlin scale. Now, why?

Mr. Allen: It moves right here in the district. It is the same or practically the same movement insofar as switching goes as a switching movement but it is not published that way. It moves right in the district.

Chairman Campbell: Then you are simply playing on words. It is a switching movement and that is the reason why you are not applying the Jones & Loughlin scale is it not?

Mr. Allen: Well, I would like to have somebody explain to us what switching movement is. I have never been able to find out. (Tr. 1336.)

Chairman Campbell: If you are moving traffic at a rate lower than the Jones & Loughlin scale which was provided for road haul movement, it must be because it is a switching movement. (Tr. 1336.)

Mr. Allen: It practically moves within the Chicago Switching District because the West end of Kirk yard is within the Chicago Switching District which is right next door to the steel plant at Gary.

Chairman Campbell: And if it is a switching movement and moves on switching rates it has a place on the cost study. If it is a road haul movement and moving on road haul rates it has no place in the cost study. (Tr. 1337.)

Mr. Allen: The Elgin, Joliet & Eastern does not subscribe to the Lowrey basis of rates and was built for a dif- [fol. 898] ferent purpose than handling a switching movement within the Chicago District but as far as the movement is concerned, it is comparable with and practically identical with the switching movement.

Chairman Campbell: As I stated before, it certainly has no business here or the rates, that is, have no business here if it is a road haul movement *if it is a road haul movement*. (Tr. 1337.)

The Witness (continuing): Kirk yard is just at the limits of the switching district and the West end of Kirk yard is within the boundary description of the district. (Tr. 1338.)

I cannot say whether on the exhibit relating to the Elgin,

Joliet & Eastern, we show points of origin and destination within the Chicago Switching District without checking each one. (Tr. 1338.) We have shown here for the Elgin, Joliet & Eastern, these rates as information; just what the rates are and what they propose to do because that line was one of the cost study roads. Most of the items show there is no change or no changes proposed in those rates. (Tr. 1339.) We have in the cost study movements from Gary to points in the district via the Elgin, Joliet & Eastern but I do not know whether you would call the movements on line haul rates. The shipments move on commodity rates published by the Elgin, Joliet & Eastern between Gary and Chicago in its individual tariff. (Tr. 1340.)

There was no requirement that they merge the showing as to the cost study from Gary to the district with those in the district; not in that particular way, but the Elgin, Joliet & Eastern was added as a cost study road and we made the study. There was no limitation or no exceptions as to what we should do with the Elgin, Joliet & Eastern but it was [fol. 899] simply added as a cost study railroad. (Tr. 1341.) I do not know whether the carriers elected to merge the Elgin, Joliet & Eastern cost with the other lines.

We were asked to study the Elgin, Joliet & Eastern which runs between Chicago and Gary in the Chicago Industrial District. We did not put in Bernice on the Pennsylvania because that is outside of the Chicago Switching District. Gary is also outside the switching district. (Tr. 1342.) Pages 52 to 64 I do not think show rates within the Chicago Switching District. I do not see any that would be applicable between points within the switching district but are applicable between two points on the Elgin, Joliet & Eastern railroad in the District. Page 62 covers points within the switching district and no change is proposed but those rates apply to railway equipment. (Tr. 1343.) Wherever there is a switching movement, it is on rates which we do not propose to change so far as the Elgin, Joliet & Eastern is concerned. (Tr. 1343.) But that road proposes to reduce some rates. It does not propose to increase any but there are some reductions. Tr. 1344.)

On page 64, the second item, between Hammond, Indiana Harbor, South Chicago, East Chicago, and Whiting, petroleum, 5½ cents, proposed 3 cents, 60,000 pounds. (Tr.

1346.) I do not know whether there is a movement of petroleum or its products from points in the "from" column to the "to" column. I do not know whether the refineries are at points shown in the "to" column, but there is sometimes a movement from points which do not have a refinery. I could not give another illustration without going through the exhibit carefully and running through these 30 or 40 pages of the exhibit. It should speak for itself. If there are any changes there they are set forth in the exhibit, of course. (Tr. 1347.) Page 64 shows movement from Buf- [fol. 900] fington, Gary, Hammond, etc., to Bridgeport, Illinois, but I do not know whether Bridgeport is a point on its line or not. It would seem to indicate so by the fact that it shows only the Elgin, Joliet & Eastern Railroad. It does not show a joint line. I do not know about the operations of these railroads around Chicago, whether they have trackage rights or not. They are not published in any tariff.

Mr. Walter: Is that correct, Mr. Allen?

Mr. Allen: That movement to Bridgeport would be over trackage rights which as a matter of fact I think are not being used right now, though I am not sure. But that is right, it is a trackage right proposition. (Tr. 1348.)

Ex. No. 85 was prepared at the request of Commissioner Campbell to show rates and what the carriers propose and where there were any exceptions to the general rule. We undertook to comply with that request and I included pages 52 to 90 inclusive of the exhibit for information. We simply endeavored to comply with the Commissioner's request. (Tr. 1349.)

Examiner Faul: But did you not go beyond the request of the Commission in including these line-haul movements?

The Witness: Which line-haul movements?

Examiner Faul: I understand that the Elgin, Joliet & Eastern is primarily a line-haul carrier.

The Witness: Well, it is a question, what is a line-haul carrier?

Examiner Faul: But after the Elgin, Joliet & Eastern was agreed to as one of the lines of cost study, the Commission, upon inquiry of the carriers as to whether or not the investigation would cover other than strictly switching roads, advised that it would cover strictly switching roads [fol. 901] as distinguished from the road-haul roads, and

are you not unnecessarily encumbering the record by including these items, or most of them, on pages 52 to 90?

The Witness: We did not so understand it, Mr. Examiner. We understood the Elgin, Joliet & Eastern was included as one of the cost study lines and that there were embraced in the investigation the rates between Chicago Heights and Gary, Indiana, on the one hand and points in the Chicago district on the other hand. As that was a part of the general case, we thought you wanted us to set forth in this exhibit the rates that are the present rates and what is proposed between those points. (Tr. 1350.) If it is the desire of the Commission to eliminate the Elgin, Joliet & Eastern roads in the respect stated, I do not think there will be any objection to it. In putting these rates in the exhibit it was not the purpose to have a comparison with the 3, 3½ and 4-cent rates on other lines, as proposed. We followed the line of rates in the districts and thought we were complying with the request of the Commission. If we went beyond that we can easily eliminate such rates as might be considered outside. (Tr. 1351.) With the exception of waste material, slag, cinders, refuse, quarry strippings, and stuff of that character, railway equipment either new or old, all commodities save those individually excepted, where the carriers appear and say they do not want them to go in, would be advances if the carriers are granted what they ask in this case, to the Lowrey basis. (Tr. 1352.) And the only carrier that has appeared up to this time is the Illinois Central with respect to tar, I think. Ex. 85 does not include all the exceptions, if any line comes in here and makes a statement that was not covered by the last part of mine; that if there were to be any exceptions the carriers would make such statements [fol. 902] for the record themselves. (Tr. 1353.) I do not know that we missed any exceptions. Naturally there might be some. Intraplant movements were not considered as a part of this work at all. They were excepted right at the start of the investigation. (Tr. 1354.) Slag moving in equipment of the shipper, with the present charge, an increase is not proposed. I said that was one of the exceptions made on waste material. It is waste, considered as waste, and so are cinders, refuse of all kinds. If there is a movement of coal and coke at less than the Lowrey basis not shown in Ex. 85 we propose to increase

it to the Lowrey basis. If not shown, it has been missed. We propose to increase rates on movement interplant from one building or location of a single corporation to another location, but going off the property of the industry unless the line which makes the movement makes an exception here. If it is not stated for this record, then they should come in and make an exception. (Tr. 1355.) The Elgin, Joliet & Eastern has not to my knowledge ever made application to become a member of the Chicago Switching Committee or a party to the general arrangement, and certainly not since I have been chairman of the Chicago Switching Committee. (Tr. 1355.)

Cross-examination.

By Mr. Livinghouse:

There are some points on the Elgin, Joliet & Eastern within the switching district where no change is suggested, but a very few, however. That road is not a member of the Chicago Switching Committee. It operates considerable trackage in the Chicago switching district in and around South Chicago, Hammond and through that section, and has generally observed the same rates as are applied in the district. It was necessary to enable them to handle any business. Regarding the proposed basis of 3, 3½ and 4 cents which the carriers proposed after their [fol. 903] conferences, it was due to the statement repeatedly made by the Chicago shippers that they wanted an all-commodity basis; they wanted uniformity and whatever the rates were, they wanted a uniform basis. If that is not satisfactory to the Chicago shippers, it may put a different face on the whole thing. (Tr. 1356.) The Elgin, Joliet & Eastern subscribed to that all-commodity basis only to the extent of the few rates they might have applicable within the Chicago switching district, or territory described as such.

Page 63 of the exhibit, near the top, shows a rate of 5 cents from Buffington, South Chicago, both points within the Chicago switching district, and no change in rates shown. Assuming that the Indiana Commission should agree to the 3, 3½ and 4 cent basis and make an order prescribing those rates, a carrier would probably have to comply with that order in that respect. (Tr. 1357.) And

that would be true of any other points in the exhibit. As to iron and steel articles between Gary, South Chicago, Indiana Harbor and Hammond, the present rate is 60 cents per gross ton, 56,000-pound minimum, and it is changed to 60 cents per net ton, minimum 60,000 pounds. They have raised the minimum weight of the car from 25 gross tons to 30 net tons, and the rate from 60 cents per gross ton to 60 cents per net ton a single-line haul. (Tr. 1358.)

Chairman Campbell: Mr. Galligan, your cost studies have been made upon the basis of 3, 3½ and 4 cents, have they?

The Witness: Yes, sir. Well, of course the cost study has been made on the basis of determining the actual cost of handling, but we had in mind justifying rates of 3, 3½ and 4 cents.

Chairman Campbell: And it is your contention, and will [fol. 904] be, that the cost study does justify those rates without exception? (Tr. 1359.)

The Witness: Yes. I would not say it justifies the figures that we would have asked for, that a majority of the roads have asked for.

Chairman Campbell: Supposing that these exceptions are allowed. Would it throw your cost study out of joint?

The Witness: Well, it would—that is, not exactly; I would not say it would throw it out of joint, but if exception is allowed and we found average cost of handling that commodity was the same as another or same commodity for a similar movement, there would be a different rate or you might say a preferential rate of that particular movement. (Tr. 1360.)

Chairman Campbell: Mr. Davis is it your purpose to put on Mr. Sauer or any of your cost experts for the purpose of making a survey of what the cost study justifies or are you going to leave that entirely to argument?

Mr. Davis: Up to this time I had not decided to put Mr. Sauer again on the witness stand but from the way the evidence is developing now, it perhaps might be well to put Mr. Sauer on at the close of our case to make a general summary of the showing made by the cost study. (Tr. 1360.)

Chairman Campbell: Will he be prepared to show what the difference in the—well perhaps I had better not ask that question but I was wondering whether or not these exceptions are going to be so numerous that they might

in any way upset the calculations as to what the level of the rates ought to be.

The Witness: These exceptions are not as numerous as might seem to be the case.

Mr. Davis: They keep referring to these exceptions as being numerous. As I understand this case there are only [fol. 905] 2 or 3 exceptions to the general basis proposed here. (Tr. 1361.)

Chairman Campbell: There seem to be a good many exceptions in this exhibit, Mr. Davis. My understanding was about the same as yours until this exhibit came in and questions arose over them. I still understand the position to be that the committee represented by Mr. Galligan is presenting this matter without exception, except for the 2 or 3 items that were first mentioned, one being waste material and another being railway equipment; that is being presented by the committee without exception, except those stated by Mr. Galligan; but he has here presented in his exhibit exceptions which individual carriers are going to claim. Now is that right?

Mr. Connell: Mr. Commissioner, I think Mr. Galligan's statement was somewhat misleading. I understood him to say that all the carriers propose to make an exception of refuse.

The Witness: That is one of the exceptions stated in the record to start with.

Redirect examination.

By Mr. Connell:

Q On page 11 of Exhibit 85, you show cinders and refuse rates on the Santa Fe which it proposes to cancel, (Tr. 1362) which would leave in effect the established switching rates. The cancellation is because there is no movement and that would not leave an exception on the Santa Fe and the same explanation as to the Baltimore & Ohio Chicago Terminal as to refuse, waste material, between industries and industries. It cancels that rate because there is no movement or one that does not amount to anything. That will go to the general basis. On the Indiana Harbor Belt, Exhibit, Page 13, they propose to cancel the $12.00 per car charge on ashes and cinders and that would go to the all commodity basis. Generally the committee does not sug-

gest any exceptions except the very few just mentioned, to [fol. 906] the Lowrey basis; (Tr. 1362) but individual carriers as shown by the exhibit or several of them perhaps will present exceptions which they are proposing. (Tr. 1363.) And most of those or a great many of them are cinders or refuse material which we have listed and also as to railway equipment we show what they propose to do. Some propose to continue those rates; some to advance those rates relatively but they are still exceptions to the general basis and covered by this general explanation. I could not say offhand without checking the exhibit what roads, other than the Illinois Central and the Elgin, Joliet and Eastern, except refuse and cinders from the Lowrey basis. I could not answer definitely right now as to there being no others. The statement is here for all those roads and they are presented under the heading of cinders, refuse material, ashes, manufacturing plant refuse, foundry refuse, etc. There is quite a number of items (Tr. 1364) and the exhibit shows what they propose to do with them. The actual facts regarding cancellation of these rates are to be found both in Exhibit 85 and in my general statement. In order to determine the roads proposing exceptions on ashes, refuse and cinders, we would have to look at Exhibit 85 and that is true of many other exceptions.

Mr. Brown: If I may say just a word, Mr. Commissioner: On page 11 of the exhibit, under heading "The Belt Railway", is shown a rate of $8.10 on cinders with no change indicated. That is not a correct statement of the position of our road. Some error must have been made in checking this. We propose to cancel that item and substitute the Lowrey basis. (Tr. 1365.)

Mr. Davis: In view of the cross examination of Mr. Galligan, on certain phases of this by Mr. Walter, we would like to have him make a statement on behalf of those whom [fol. 907] he represents as to whether or not they want a uniform basis in Chicago or whether they want separate rates on separate commodities.

Mr. Walter: We contend for a uniform basis but we say that these exceptions of the individual carriers were made to meet a situation which exists with respect to each individual movement and that you must justify any increase in those individual rates. (Tr. 1366.)

Recross-examination.

By Mr. Walter:

Our committee does not publish these exceptions. They are published by the individual lines in their individual issues, (Tr. 1366) but ordinarily their reasons for publishing these exceptions would be discussed in the Chicago Switching Committee regardless of the fact that they may cover a single line haul. The single line rate naturally would not be determined by the switching committee, although it would be submitted to the committee for discussion as to whether there was objection to it and if objected to that would be considered but if the Pennsylvania desires to put in a single line rate it may do so under the rules of the Committee over the objection of any other line. (Tr. 1367-1368.) The committee considers individual publications for the purpose of uniformity in the rate adjustment. (Tr. 1368.) The switching committee takes up matters that are subject to discussion and if there is no objection to the establishment of rates they are published, but the idea is to preserve uniformity but if there is objection, and a line desires to go ahead, it may publish the rate nevertheless, but it follows the procedure of giving notice so that other lines may be advised. (Tr. 1369.) We have a joint conference committee of shippers and carriers—a shippers section and a carriers section. If the switching committee [fol. 908] decides to make a change in rate or increase, Mr. Brown of the Chicago Board of Trade, who is chairman of the shippers section of the joint conference committee is advised of that proposed action. (Tr. 1369.) An individual carrier cannot publish an exception to the Lowrey basis for a particular movement without submitting it to our committee. Of course, any road can do anything, but it should observe the understanding by proceeding under the rules and it is a part of the understanding with the shippers so that they will have notice of the action that they may appeal to the Joint Conference Committee. (Tr. 1370.) In proposing cancellation of the rate on page 11 covering cinders and refuse material from industries on the Santa Fe to dumping points on the Santa Fe, the representative of that road said he understood there was no movement or any of particular significance at the time the proposal to cancel was made and to let the general basis apply.

He proposed to cancel the rates but did not definitely say that it made no difference to the Santa Fe, or that it had no movement. The Santa Fe was told what was wanted in the exhibit and this was checked in by the Santa Fe and one of the reasons given for cancelling the rate and advance to the general basis was because the movement was of very little consequence. (Tr. 1371.) As to the $10.00 and $15.00 rates to be cancelled by the Baltimore & Ohio Chicago Terminal, I did not say those cancellations were because there was no movement. As to the first one, I know that was discussed a little but I did not have that information from the Baltimore & Ohio Chicago Terminal. (Tr. 1372.)

I could not say if the basis of 3¢, 3½¢ and 4¢ is established whether or not the rates from Buffington, Indiana should come down to the level of the basis proposed for the [fol. 909] switching district. (Tr. 1373.) The Elgin, Joliet & Eastern is not a member of the Chicago Switching Committee. With reference to the section 4 violations referred to by Mr. Pierce, there are a number of low commodity rates in effect from points outside of Chicago to Chicago. From time to time, we have sought to advance those rates to a remunerative basis and in some instances shippers have not objected and where they did, we filed tariffs that have been suspended and we did not get those advances. We have provided in the switching tariffs for a minimum which will take care of the proposed increase in the Chicago district and increase the rates sufficiently to clear the rates we propose in the district with a minimum charge per car. (Tr. 1374.) As to readjusting these rates, we are analyzing that question or we are going into that question now. A number of the roads are analyzing their commodity rates from surrounding territory into Chicago in an effort to get them to a remunerative basis. (Tr. 1374.) (1375.) Having in mind the competitive situation in many industries and where a general adjustment is sought with some rates to be raised and others lowered before a rate is made which vitally affects an industry located on a given line, a careful investigation of that particular industry and the effect of the rate change upon it should be made before an increase is made. (Tr. 1376.) That is done. It will be done by any wise traffic man. A number of carriers, but how many, I do not know, had made such an investigation on May 15th, 1928 when we published these proposed increases in the

Chicago rates, (Tr. 1376) but it was prior to this time that Illinois carriers started an investigation and an analysis of their low commodity rates from outside districts into Chicago; and that was independent of anything under the 4th section or of an increase to 4¢ and having that information at the time the switching case came up they were able to [fol. 910] merge the two ideas and reached the conclusion that they should have the minimum charge until they could get an increase on the commodity rate from the outside, in. (Tr. 1377.)

T. E. Bond, called in behalf of respondents, was duly sworn and testified as follows:

Direct examination.

By Mr. Allen:

Have been with the Elgin, Joliet & Eastern Railway Company for the past twenty years, and am its traffic manager and have been since 1923. This railway operates as a belt line around Chicago, starting at Waukegan and running a distance of 30 to 40 miles outside of Chicago to the eastern end of its line, which is Porter. It has another line reaching South Chicago, Hammond and other points in the so-called Chicago district. (Tr. 1378.) The line was located from an operating standpoint to take traffic out of Chicago and keep it out of the congested district, both through and local traffic. We have never subscribed to the Lowrey basis of rates because we believe that basis is too low. We have a large amount of tonnage moving to the district and have never felt it necessary to meet the low rates as we considered them, that were effective under the Lowrey agreement. We have always treated our line from Gary to South Chicago, Hammond, Buffington, Whiting and Indiana Harbor on the same basis. In other words, we had Chicago district points that we treated on a uniform basis and applied the same rate from and to all those points to other points in the Chicago district. (Tr. 1379.) In so far as the adjustment with respect to line haul rates is concerned, traffic men claim that the Lowrey basis of rates in the Chicago district is more or less reciprocal. That would not be true with respect to the intra-district

[fol. 911] movement. (Tr. 1380.) No advantage would result to the Elgin, Joliet & Eastern Railway on line-haul movement in going on the Lowrey basis. It would be a disadvantage because it would require the movement of traffic through junctions in the Chicago district instead of taking it out to points on the outside, which is what the road was built to do. Generally speaking, we have always carried from Gary into the Chicago district on higher rates than the Lowrey basis. We have a few of our rates under suspension now before the Commission. (Tr. 1380.) The majority of them are published between local points on the Elgin, Joliet & Eastern, such as between Gary and South Chicago, or between points in Gary, or between points in South Chicago where the rates are 3 cents per hundred pounds or 60 cents per gross ton. We proposed increases for the one-line haul basis proposed by carriers operating under the Lowrey tariff, that is 3 cents for one-line haul, being 60 cents per net ton instead of gross ton, which makes an increase. Practically we are now on the same basis that we have been for some time, except where rates that we had were also for one reason or another other than the rates proposed by the carriers under this new adjustment in the district. In that event we raised those rates to make our rates come up to the proposed rates of the other carriers. For the most part our rates shown in Ex. No. 85 have been designated here as exceptions, and are not exceptions to our general basis of rates. (Tr. 1381.) We merely proposed to continue the rates we now have in effect. Cement, of course, is practically the only commodity produced at Buffington. Its rate from there to the district is 5 cents, whereas the going rate on the line is 3 cents. The cement rate was brought about by the increase under General Order 28 and has never been changed because cement rates generally in this territory have been [fol. 912] adjusted with relation one to the other, and to change the cement rate from Buffington to points in the Chicago district would necessarily bring about a great demand for reduction in rates from points outside the district. That refers to any point. (Tr. 1382.) But LaSalle, Oglesby and Dixon are in keen competition with the Buffington plants into the district. The 5-cent rate is almost

useless, as 75 per cent of the production of the Universal Portland Cement Company at Buffington moves to the Chicago district by truck, and a rate of 3 cents, 2 cents or 1 cent probably would not move that cement today, so there is no particular reason for reducing it, and I would not simply disturb the adjustment, which is working out very well as it is.

So far as the Chicago district stations are concerned, we could not separate Gary and South Chicago, for example. We have always handled them on the same basis, and as to our Kirk yard, which is our breakup yard for everything in the Calumet district, a shipment from Hammond, which is without question in the Chicago district, would move through Kirk yard going to South Chicago, and Kirk yard is Gary. Gary is intermediate between Hammond and South Chicago, and the operation of this railroad is the same at Gary and South Chicago and all of those points. (Tr. 1383.) The stations on the line in the Chicago district are South Chicago, Indiana Harbor and Whiting, Hammond, East Chicago, and Buffington. These are all I recall offhand. The Elgin, Joliet & Eastern Railroad has no particular position to take in this case. The Commission asked that our line be included in the cost study. We made it the same as any other railroad and have put in that cost study movement in the Chicago district, as we understand the Chicago district. A great deal of talk has been had on the Chicago switching district. The [fol. 913], official name of this district is Chicago District, and not Chicago Switching District, and there is nothing in the tariffs that cover the joint hauls that says anything about switching district except that the name "Chicago Switching Committee" is on the title page that refers to the Chicago district. (Tr. 1384.)

Chairman Campbell: I think one statement ought to be corrected as to the Commission asking the inclusion of the Elgin, Joliet & Eastern in the cost study. The Commission did not ask that any lines be included.

The Witness: Well, I was not at the conference. We were not soliciting an invitation to get into the case, but we did understand that the Commission wanted figures for the Elgin, Joliet & Eastern, probably because of a very heavy carrier business in this particular district. (Tr. 1385.)

Chairman Campbell: I can see, however, where we might have thought it was desirable because of the iron and steel phase.

The Witness: Yes.

Chairman Campbell: And it may be a distinction without a difference, but I want it understood, however, that we did not order any of this testimony. (Tr. 1385.)

The Witness: As I said before, Mr. Commissioner, I was not at any of those conferences, but I simply understood that we were expected to participate in the cost study. (Tr. 1386.)

I am not an operating man, but so far as I know, on a movement from Gary to South Chicago on our line, in so far as circumstances and conditions of operation are concerned, is comparable to any similar movement within the Chicago district on any other railroad, but I do not know anything about the operations of the other people. But I do know that the movement from Gary to South Chicago on our line is the same kind of movement that it has from [fol. 914] Buffington or Indiana Harbor or South Chicago, and assume it is the same as any other line. (Tr. 1386.) I have been over the Chicago district and watched the movements made and have been through breakup and classification yards. I have done all that and say, as far as I know, that operating conditions are the same; but I am not an operating man. (Tr. 1387.) As to the suggestion of Commissioner Campbell that our line should have published its rates on the basis specified by the Commission on iron and steel in Docket 17,000, I do not see how we could do that and maintain them in competition with rates in the Chicago District on other lines. Our rates have not been made on the Lowrey basis but have been made (Tr. 1387) with relation to rates in the district published by other lines. They have been somewhat higher, but not as much higher as they would be under 17,000. We have a manufacturer of steel on the line that competes with steel manufacturers located on other lines within the Chicago district, and our rates for a movement into and within the district must be somewhat in relation to the rates of the other carriers. Mr. Walter seemed rather interested in the Elgin, Joliet & Eastern's exceptions, but as I looked them over they do not amount to anything at all. Without criticising anybody making this statement, it is somewhat

a mistake to call them exceptions, as many of them are not. As a matter of fact they simply set up what the present rate is, the proposed rate, and "No change." That makes a big bulky volume which might have been covered in a very few pages. (Tr. 1388.) While our line has been used as a part of the cost study it is not a subscriber to the Lowrey agreement, never has been and does not want to be, and hopes it will not be. We desire to carry our rates on the basis that they are today, and if we can get the increases that we are proposing we certainly want to get [fol. 915] them. It is a fair statement, leaving out reference to the Lowrey basis, that it is our desire and purpose to make our rates independent of what other rates may be established by other lines in the switching district of Chicago, having due regard to the competitive situation we are forced to meet, and with due regard to whether or not the rates are reasonable for the movements. (Tr. 1389.)

Cross-examination.

By Mr. Livinghouse:

We are not asking generally the 3, 3½ and 4 cent basis. What we ask is this: We have today for one-line hauls a 3-cent rate, generally speaking, which is sometimes applied as 60 cents per gross ton. We asked an increase to 3 cents per hundred pounds to make it uniform, being what the other lines are asking for a single-line haul. Our joint-line haul rate is 5 cents per hundred pounds, speaking generally, and we are not asking for any increase or suggesting any reduction in that basis. As to certain switching lines like Chicago Short Line, Chicago, West Pullman & Southern, Chicago & Calumet River, we have applied our basis of 3 cents to deliveries on those lines. We ask to advance those rates to 3½ cents, which is the two-line haul rate proposed in the Chicago district. The Elgin, Joliet & Eastern was never in the Lowrey agreement, and in stating that we could not put in the line-haul rates on iron and steel because too great, (Tr. 1390) it should be observed there is a vast difference between a 3-cent rate and a 2½ cent rate, Mr. Examiner, and a rate which would go up to probably 8 or 10 cents, as compared with such 2½ or 3 cent rate.

Examination by Chairman Campbell:

I think the Jones & Laughlin scale starts at 6 cents for [fol. 916] the first 10 miles, and if we made a lower rate it

was not because we believed the 6-cent rate was too high. We simply did not change our rate at all, Mr. Chairman. We never considered the Jones & Laughlin changes would apply to a terminal district. (Tr. 1391.) The word "switching" is rather hard for me to overcome, but leaving it out, we considered our line a terminal railroad and not affected by the line-haul rates laid down in the Jones & Laughlin scale.

Examination by Examiner Faul:

Going back to our cement rates, Buffington to South Chicago, these points are about 12 miles apart, and that distance is less than the average movement within the Chicago district, although I do not know offhand exactly what the average distance is. If the Commission should prescribe the general basis of 3, 3½ and 4 cents or anything less than 5, there are no transportation conditions present in a movement between Buffington and South Chicago which should give us a higher basis than the Lowrey basis. (Tr. 1392.) We do not want to disturb the general adjustment of cement rates in this territory that are working out pretty well now, and that would not mean another pound of business for our line, but so far as transportation reasons go, there are none justifying a higher rate from Buffington than the basis proposed, if the Commission orders it. (Tr. 1393.)

Examination by Mr. Davis:

There are cement plants at LaSalle and Dixon, Illinois, Hannibal, Missouri, and Mitchell, Indiana. The Commission did not prescribe in Docket 8182 the cement rate from Buffington. The adjustment provided under that docket excepted rates in terminal or industrial districts, or some-
[fol. 917] thing like that, but the Buffington rate simply grew up, and the gradual increase or gradual changes in the rates has brought it to 5 cents, and we are not having any trouble with cement rates in Illinois and therefore I would not like to have a Buffington reduction started. (Tr. 1394.) In trying to draw the line between terminal and switching terminal and line haul, I think we have got to consider this terminal district, whatever else you do, including the Elgin, Joliet & Eastern. (Tr. 1395.)

Cross-examination.

By Mr. Walter:

If our road became a member of the switching committee and a party to the Lowrey Tariff, it would not have the effect of changing points of interchange so far as this particular business is concerned, so far as traffic to and from the Chicago Switching District is concerned. Gary is our most important point and probably produces more tonnage than any other point in the district and I think our company in most cases owns the industrial tracks at Gary. (Tr. 1396.) We own tracks in other industries besides those at Gary. I do not know whether it is an exception for a railroad to puf in industrial tracks. I could not tell you the important industries where we furnish industry tracks free of charge. Besides those furnished at Gary, we furnish tracks at South Chicago to the Illinois Steel Co. I cannot say offhand, but I think we furnish industry tracks aside from those that are affiliated with the ownership of the Elgin, Joliet & Eastern.

Mr. Allen: I can say that we do and it is the general scheme to own tracks in all industries, Mr. Walter, on the Elgin, Joliet & Eastern. (Tr. 1397.)

The Witness (continuing): I had not thought of that fact as a reason why our rates should be higher than the general line of rates. I suppose these tracks are expensive, but I do not know the arrangement for maintaining them. [fol. 918] We do not own tracks in the Standard Oil Company and I suppose, other large industries served by our line, at least a good many of them, own their tracks. (Tr. 1398.) The Cement Co., and the Steel Company handle their business entirely separate from the Elgin, Joliet & Eastern Co., and the rates they pay are of concern to each of them. I said a reduction in the Buffington rate might create a demand for a reduction in the rates from Dixon and La Salle. I do not think the reduction in the Buffington rate, or the increase in the ability of the Illinois Cement Companies to get into the Chicago District, if the Buffington rate was reduced, would have no effect on the Buffington plant or the Elgin, Joliet & Eastern Railroad because the freight rate has absolutely nothing to do with it because it does not move by freight from Buffington. (Tr. 1399.)

Even though 75% of cement moves from Buffington into Chicago by truck at the present time, I would not think an increase to 3¢, 3½¢ and 4¢ on articles generally in the Chicago District would put more trucks on the streets. Cement is a commodity that lends itself very readily to trucking so do other commodities and they move by truck today. (Tr. 1400.) As we do not handle packing house products, I do not know whether the packers would truck their meat all over Chicago instead of moving it in refrigerator cars if the increased rates go into effect. (Tr. 1400-1401.) I do not think meat would be harder to handle by truck than package freight or iron or steel articles because they cannot move iron and steel by truck. Generally speaking, the position of the Elgin, Joliet & Eastern in this case is one of absolute indifference. I do not know that some of the interests on the Elgin, Joliet & Eastern that are competing with other interests in Chicago whose rates are proposed to be increased would be greatly benefitted by an in-
[fol. 919] crease in the Chicago rates, and I would not think if their competitors' rates were increased in the district that it would make it easier for them we serve to get there.

Redirect examination.

By Mr. Allen:

Any excess earnings of the Elgin, Joliet & Eastern would not go to the steel corporation. The law covers that and at one time the company did pay on excess earnings under the recapture law. That did not go to the steel corporation. (Tr. 1402-1403.)

J. A. Behrle, called in behalf of respondents, was sworn and testified as follows:

Direct examination.

By Mr. Gladson:

Am freight traffic manager of the Chicago & Alton Railroad Company; have been connected with this line for the last 25 years; gave testimony in Docket 19557 earlier in the year in which the Joliet-Chicago lines desired to establish temporary rate on crushed stone, sand and gravel in the

Joliet district to Chicago. The Commission declined to permit this rate to become effective, stating it was a matter to be considered with the revision of the rates in the Chicago district. (Tr. 1404.) The Chicago and Alton is interested in this proceeding because a number of gravel pits and quarries are located on its line in the Joliet district. These are at Lemont, Joliet and Millsdale, Illinois. My testimony will have to do with crushed stone, sand and gravel only and from the standpoint of relationship and not with the measure of the rates. (Tr. 1405.) Prior to the Lowrey arrangement of August 1st, Joliet pits and quarries could compete quite freely in the Chicago market because Chicago-Joliet lines carried net rates from Joliet [fol. 920] to Chicago comparable with those applicable from quarries in the Chicago Switching District. (Tr. 1405.) The rates of the originating lines had added to them the switching rates of the delivering lines. The Lowrey tariff proposed a minimum rate of 50¢ from Joliet to Chicago and 30¢ per ton single and 2 line rate within the district creating a 20¢ spread between Joliet and inner district producers. The Lowrey Tariff was protested by Joliet producers but allowed to become effective without an exception on crushed stone, sand and gravel and this situation caused revision of rates in the Chicago District and from Joliet to Chicago. We feel now and did feel then that if crushed stone, sand and gravel is to move from Joliet to Chicago, a readjustment of those rates, Joliet to Chicago, would have to encompass a revision of the rates in the district. Subsequent to the first Lowrey tariff, the Joliet-Chicago rates became 65¢ for single line and 85¢ for joint line hauls, contrasted with a 50¢ rate in the district. (Tr. 1406.) The Chicago & Alton as a delivering line has in effect with the originating lines in the Chicago District, a 50¢ rate, whereas stone, sand and gravel, originating on its rails at Joliet and delivered on its own rails at Chicago, pays 65¢, which difference has entirely destroyed normal movement of these building materials from Joliet. The two line rate in the district is evenly divided, the delivering line assuming per diem expense, but our road as an originating line on movement from Joliet to Chicago would pay the delivering line 30¢ and pay a reclaim to the delivering line. (Tr. 1407.) The Chicago, & Illinois Western, on the Lowrey Tariff, enjoys the two line basis of 50¢ to deliveries involv-

ing 3 lines which to a delivery on our road would divide 33¢ to the Chicago & Illinois Western, out of which intermediate charge is assumed and 17¢ to the delivering line. [fol. 921] (Tr. 1407.) The movement of this material from Joliet has become less as the operation of the revision continued, and is the situation today. Only in unusual instances can Joliet shippers move their material from the Chicago & Alton rails, and therefore we ask the Commission for a readjustment of rates within the district, which will reestablish the Joliet district in the Chicago market. (Tr. 1408.)

Cross-examination.

By Mr. McCornack:

On a two-line haul our delivery service within the district, whether on crushed stone or gravel, is substantially the same. (Tr. 1409.) In the district where a single line is 40 cents, the two-line haul would be 50 cents, and where the single-line haul is 50 cents that applies to two-line hauls also. (Tr. 1409.) Two-line hauls of gravel from the Joliet district would pay 85 cents to the same destination, or 20 cents over the single-line rate of 65 cents. (Tr. 1409.) If the proposed rates are established, gravel or crushed stone within the district would pay, as compared with Joliet shippers, on a relation of 70 cents to 85 cents. At the time the 65-cent rate from Joliet was proposed, it was also proposed to change the crushed stone rate within the district to 60 cents for a single-line haul. (Tr. 1410.) It is my judgment arbitraries for a two-line haul on gravel and crushed stone should be the same within the district. (Tr. 1411.)

G. F. VIVIAN, recalled as a witness in behalf of respondents, testified as follows:

Direct examination.

By Mr. Davis:

I am the same Vivian who previously testified in this [fol. 922] case. I have made studies of Exs. 7, 8 and 11, as requested. The result of the study, coupled with a further statement I desire to make, are embodied in four ex-

hibits (Tr. 1412), referred to as Nos. 7-A, 8-A, 11-A and 11-B. (Said documents were offered in evidence, marked "Exs. Nos. 7-A—8-A—11-A—and 11-B, respectively, Witness Vivian.") (Tr. 1414.) In preparing these statements we reverted to the individual cars for Exs. 7-A and 8-A, setting up the various costs for each car; for Exs. 11-A and 11-B it was necessary to revert to the bills to show present revenue, proposed revenue per car, per car miles, and ton miles as to each car. (Tr. 1414.)

Exs. 7, 8 and 11 were generally criticised because they did not show sufficient detail of information interested parties wanted. (Tr. 1414.) Compliance with the various requests to restate these three exhibits has resulted in Exs. 7-A, 8-A, 11-A and 11-B, respectively.

Pages 12 of Ex. 7-A, beginning with Number of Cars, column 3, 20, for commodity 49, to and including the total reading 421, should be stricken out in their entirety, having been duplicated from page 9. The only line belonging on page 12 is the one under Commodity 30. The rest of the page should be stricken out.

On page 20, column 4, is carried a decimal point as in Commodity No. 1, 86935.94, which should read 8,693,594. (Tr. 1415.) That correction applies to the entire column.

This exhibit shows interstate proportion of cost for one-line haul is 63.4 per cent; Illinois proportion, 15.5 per cent. This percentage does not appear on the face of the exhibit, but it can be computed from the exhibit. All figures I give from now on can be computed from these exhibits without reference to any work sheet. Those are percentages of the total cost of one-line hauls, 63.4 per cent interstate, 15.5 per [fol. 923] cent Illinois intrastate, and 21.1 Indiana intrastate, covering a study of 7573 interstate, 1951 Illinois intrastate and 2426 Indiana intrastate cars (Tr. 1416), totaling 11,950 one-line hauls; two-line hauls, interstate 5472 cars, Illinois intrastate 5853 cars, Indiana intrastate 158 cars, total 11,483 cars. The percentages of total cost are: Interstate 51.1 per cent, Illinois intrastate 47.3 per cent, and Indiana intrastate 1.6 per cent. For three-line hauls 803 interstate cars, 1930 Illinois intrastate cars, none for Indiana intrastate, making a total of 2733. Interstate percentage of total cost is 31.4 per cent, Illinois intrastate 68.6 per cent. Each of these percentages applies to total cost. (Tr. 1417.)

Ex. 11-A covers 11,950 one-line car studies, representing 60.5 per cent of total; 7800 cars were not studied, representing 39.5 of the total. Combining these two, 41.4 per cent were interstate, 13 per cent Indiana intrastate, and 45.6 per cent Illinois intrastate. Those are percentages of cars. Percentages of tons, present and proposed revenue, are approximately the same as these percentages given. Proposed revenue on the cars studied increases present revenue 16 per cent. The cars not studied, proposed revenues increase present revenues 30 per cent; total increase being 19 per cent for one-line hauls. A further separation of the study sheets shows that of the 41 per cent interstate business, 38 per cent were study cars and 3 per cent were others. (Tr. 1418.) Indiana intrastrate 13% of total, 12% for study cars; Illinois intrastate, 45.6%, 9% only were study cars, the others were not study cars. (Tr. 1418.) On 2 line hauls, interstate represents 41.9%, Indiana intrastate 1%, Illinois intrastate 57%. The interstate study cars were 30.9%, Indiana intrastate, 1%; the [fol. 924] latter being practically all study cars; while of the 57% of Illinois intrastate movement 33% of the total were study intrastate Illinois cars as against 24% other Illinois intrastate cars. The weight and present and proposed revenues again have approximately the same percentages. The 2 line hauls studied were 65% of the total movement and proposed 2 line revenues show increase over present of 39%. (Tr. 1419.) In 3 line hauls, 52% of the cars were studied. Interstate total of 30%, no movement in Indiana and 70% Illinois intrastate. In the 30% interstate, half were study cars, the balance not. 66% of Illinois intrastate were study cars, proposed revenues for 3 line hauls increase present 22%. (Tr. 1419.) Average ton haul one line is 12.85 per study road cars, while total is 1062; 43.1 tons average loading for study road cars against 41.1 tons for total. Average ton haul 2 lines, 24½ against 22.6 average total. Average loading per car, 42.1 per study road cars and same for total; and 26½ average ton haul 3 lines against 25.8 for total. Average loading study cars 42.7 tons as against 42.8 tons for the total. Separating cars according to movements 18.6% 1 line hauls were on Lowrey basis; 14% being cost study cars; 36.7% moved one line on rates over Lowrey basis, 35.6% being study road cars. Shipments moving one line under present

Lowrey basis or under basis proposed which will move up to the Lowrey basis were 16.4% of total, 6.4% being study cars. Of those lower than the Lowrey basis that will remain so 28%, 4% being study cars. (Tr. 1420.) 2 line movements 73½% of total moved on Lowrey basis, 42.9% being study cars. Movements above Lowrey basis 12.5%, 10.6% being study cars. Shipments now taking lower than Lowrey basis that will be increased to it, 12% of total movement, 9.6% being study cars, leaving movement lower than Lowrey basis 2% of total, 1.7% being study cars. [fol. 925] 3 line Lowrey basis movements represent 38.9% of total, 18.8% being study cars. Over Lowrey 30.7%, 17.9% being study cars. Under Lowrey basis to be increased thereto, 7.3%, 5.5% being study cars, leaving those lower than Lowrey that remain so, 23.1%, 9.85% being study cars. Each percentage given is based on total for the particular haul. (Tr. 1421.)

Commodity 49, pig iron and blooms, was inadvertently omitted in this exhibit, though included in the total. I wish to put therein, beginning with column 3, the following figures: Tons, 10,555.79; car miles, 2,399; average haul, 12.9 miles; ton miles, 138,038.75; average ton haul, 12.89 miles; shortest haul, 8 miles; longest, 37 miles; present revenue, $3770.28; proposed revenue, $6,149.49; lading, tons, 56.75; present revenue, $20.77 per car; proposed, $33.06; present revenue per ton, 36 cents; proposed, 58 cents. (Tr. 1422.)

On page 37, group No. 55, where $34.71 is shown in each, is evidently in error, which will be checked later against my work sheets. (Tr. 1422.) Ex. 7-A shows this error, page 13. Both are wrong. (Tr 1423.) Item 55 on page 37, Ex. 7-A, should read: "Present revenue, $247.95; proposed revenue, $347.13; lading, tons, 49.60; present revenue, $24.80; proposed, $34.71." I have made no attempt to summarize Chicago Heights cars covered in Ex. 11-B, or the cars covered in 8-A. That is all.

Mr. Walter: Mr. Examiner, we would like to reserve our cross examination until tomorrow.

Examiner Faul (to witness): You are excused until tomorrow morning. (Tr. 1424.)

E. F. SAUR was recalled in behalf of respondents and testified as follows:

[fol. 926] Direct examination.

By Mr. Davis:

I heard the testimony of Witness Rummell given yesterday. I am one of the co-authors of the formula followed in this case, being my Exhibit 5. Under that, car repairs have been worked out on the time element basis. My experience and observation of the operation on the Pennsylvania Railroad through my terms of service covers 25 different positions. During the time I was yard clerk making car records I put in one year investigating reports of over, short, and damaged freight, personally investigating the causes of freight claims, which was a pioneer movement of what today is common practice on all railroads. My work being confined to one division, but I rode local freight trains, through freight trains in and around yards, settled personal injury claims, came in contact with the causes of such claims, etc. I was yardmaster in a coal district, and remember that for 21 consecutive days was out with a small wrecking outfit picking up cars damaged in terminal service. Was yardmaster where classification service was performed on practically every train. In 1917, when we came to devise a formula that could be used without having too great expenditure of effort and which did not pretend to produce 100 per cent result, but from 85 to 95 per cent correct, I took part in that; and this Chicago switching cost investigation is giving us opportunity to show the formula will produce 90.8 of the total cost. (Tr. 1427.) My work in these different positions and particularly that as yardmaster gave me an opportunity to observe and absorb knowledge of way car repairs work out under the formula on the time-element basis. (Tr. 1428.) No current records are kept showing anywhere near the number of times a freight car is handled in terminal service, or terminal mileage, and if there were, would mean very [fol. 927] little because it would record only movments of freight cars between yards and between yards and interchange points, and would not furnish any sort of reliable information as to number of times a car must be handled in classification yards. At an industry it is practically

necessary to switch every car. We feel that the day basis is fair in determining cast of terminal operation. Though not in a position to prove it from actual figures, I think opportunity for damage is much greater in terminal service than it is in a road haul. I have seen transportation from the old link and pin couplers on freight cars through the transitory stage where there was part of the time one kind of couplers and part another, and have seen increasing number of interlocking plants installed for the purpose of saving road trains starting and stopping, and my experience and observation causes me to believe that the per day basis is as fair as humanly possible to use, always being ready to use a better one if one can be devised through constructive criticism. (Tr. 1429.)

Mr. Davis: You may take the witness.

Mr. Walter: Mr. Examiner, since Mr. Saur will undoubtedly be here during the course of the hearing, I should prefer to examine him after I cross-examine Mr. Rummel. (Tr. 1429.)

G. W. Renwick was sworn and testified as follows:

Direct examination.

By Mr. McCornack:

Am Vice President in charge of sales of the Chicago Gravel Company and have not heard the testimony in this proceeding, but have read a part of the record in the case. (Tr. 1430.) Our company produces sand and gravel but the products we sell are mainly washed gravel and torpedo sand. Am familiar with prices generally on sand and [fol. 928] gravel and competing materials. In such selling, we compete with crushed stone and slag produced within the Chicago District, and sand and gravel from outside the district. The Joliet gravel district is peculiarly related to crushed stone shipments in the Chicago District. Joliet gravel is the principal competitor of crushed stone in Southern and Eastern parts of the Chicago Disfrict. We cannot sell gravel on the West side of the district because of crushed stone quarries, nor on the North side because of sand and gravel from zones 1 and 2 and on account of crushed stone within the district. (Tr. 1431.) Consid-

erable sand moves from Indiana to the Chicago District but no gravel nor does gravel move to the district from points in Northern Illinois and Wisconsin to the South side of the Chicago District, speaking generally. The competition in the Southern part of the Chicago District is crushed stone originating in the Chicago District and gravel from our Rockdale pit. (Tr. 1432.) In computing our prices, we must know and take into account our freight rates to the Chicago District. To reach the Northern part of the Chicago District our rate would be 85¢ per ton. (Tr. 1433.) From Northern Illinois pits the rate to the same point would be 65¢ from plants within 50 miles of Chicago, 70¢ within 100 miles and 75¢ from those within 150 miles and the rate on stone in the district to those pits is 50¢ generally and in a few cases, 60¢. Joliet cannot meet this competition in the Northern part of Chicago. We sell our product by the ton, but the price is based by cubic yard, 3,000 pounds. (Tr. 1433.) I have prepared Exhibit No. 86, showing delivered price of Joliet gravel and Chicago stone for single and joint line hauls to points within the district assuming Mr. Womer's testimony was correct as to the production cost of sand and gravel (Tr. 1434), which was of-
[fol. 929] fered and received in evidence, marked "Exhibit No. 86, Witness Renwick." (Tr. 1434.) Assuming Mr. Womer's figures to be correct on single line hauls under present rate basis, Chicago district crushed stone has an advantage therein of 25¢ per yard over us. If they get their proposed increase, it will have an advantage of 12½¢ per yard over us. On joint lines under present rate, crushed stone has an advantage of 55¢ per yard over us, delivered at destination and if proposed increase goes in they will have an advantage of 30¢ per yard. The last two are for joint line deliveries. The best we could possibly have if they get their increase and we keep our present rate is that they would have the same rate per yard as we would, based on the fact that crushed stone weighs 2,500 pounds per cubic yard and a cubic yard of gravel, 3,000 pounds. There is no competition encountered by stone or slag in the Chicago District that is not encountered by gravel from Joliet. Under present adjustment of freight rates, Chicago's stone and slag have a monopoly.

Cross-examination.

By Mr. Walter (Tr. 1435):

I would want the rates on all commodities raised in the Chicago district if that were necessary to give us proper relationship in our rates on gravel as compared with crushed stone. There has always been a relationship between the rates on sand and gravel from Joliet and crushed stone in Chicago. My testimony goes only to sand and gravel and we are not particularly interested in the other rates such as iron, steel and oil. We would have no desire to see an increase in rates on other commodities, if they would not bother our rates either way. (Tr. 1436.) There is a remote connection between the rates on oil in the Chicago district and rates on sand and gravel from Joliet. I think we pay a little of their revenue, that we pay on our commodity, enough to take care of the trans- [fol. 930] portation charges on something more than we ship, and that is our only interest in this case. We are only interested in sand and gravel rates versus the crushed stone rates. (Tr. 1437.)

L. A. Behrle, recalled as a witness, testified as follows:

Direct examination.

By Mr. McCornack:

I have three points I desire to dwell on in addition to the testimony previously given by me. I have prepared an exhibit marked 87, showing history of rates on sand and gravel from Joliet to local deliveries on the Atchison, Topeka & Santa Fe, Chicago & Alton, and Chicago, Rock Island & Pacific at Chicago, to show what rates enter into competitive situations between gravel from Joliet and that in the district. (Tr. 1438.) Compared with Womer's Ex. 39, it appears that from just prior to June 25, 1918, to the present time, single-line Baltimore & Ohio Chicago Terminal rates were increased 20 cents, Chicago & Eastern Illinois 20 cents, Indiana Harbor Belt 20 and 25 cents; that the so-called Lowrey joint rates were increased 20 cents, but from Joliet to Chicago the Santa Fe rate was increased

35 cents, the Chicago & Alton 45 cents, the Rock Island 35 cents; at one time the Santa Fe and Rock Island rates were the same as the so-called Lowrey basis in the district, and the same as the rate of the Baltimore & Ohio Chicago Terminal. General Order 28 increased these rates, and from Joliet were increased a flat 20 cents per ton, disposing of fractions as required in that order. District rates were first increased in the same amount, but thereafter, in November, were revised and reflected only a 25 per cent increase. (Tr. 1439.) (Ex. 87 offered and received in evidence, marked "Ex. No. 87, Witness Behrle.") (Tr. 1440.)

[fol. 931] I have prepared Ex. No. 88, headed "Analysis, Etc." Certain producers have testified as to their satisfaction with the present basis of rates within the district, and if change was to be made, should be on the basis of car rates, using 100,000-pound marked capacity of car as minimum, with a rate of $20.00 per car for single-line hauls, $25.00 for two-line and $30.00 for three-line. Under present rules carriers permit all cars to be loaded 10 per cent above marked capacity, and they are restenciling cars indicating the maximum load limits. (Tr. 1440.) We load many 100,000-pound marked capacity cars to 125,000 pounds or 126,000 pounds. This exhibit shows rates per ton which result if a 100,000-pound marked capacity car is loaded with 55 tons. That loading is possible and is done every day, and a car can be loaded far in excess of that if there is any incentive to do it. (Tr. 1440.) This exhibit shows that proposed single-line rates would be reduced from 40 and 50 cents a ton to 36.36 cents; two-line hauls, 50 cents to 45.45 cents; and three-lines from 60 to 54.54 cents per ton, based on those loadings. This basis would permit preference in furnishing cars. The industry receiving the greatest number of large-capacity cars would benefit. An 80,000-pound capacity car would load under normal circumstances 88,000, whereas a 100,000-pound car could be loaded to 110,000 pounds. There would really be no extra revenue for the 8 tons in the one case and the 10 tons in the other, and the industry receiving the greater number of large cars would benefit under an arrangement of that kind. (Ex. No. 88 offered and received in evidence, marked "Ex. No. 88, Witness Behrle.")

At the time I testified in May, did not have Mr. Maynard's Ex. 36 before me, and now point, as I did with Ex. 37, that there is proof in the exhibit that the three-[fol. 932] line shipments indicated on page 1 as being .01 per cent of 1 per cent, are in fact considerably in excess of that. Totaling the cars shipped from McCook to carriers not connecting with Chicago & Illinois Western, we find 6,286; subtracting from those the two- and three-line shipments from all other producers at McCook, shown on page 1, or 4,179, there must have been at least 2,107 three-line shipments by Dolese & Shepard, which would amount to 25.96 per cent rather than .01 per cent. (Tr. 1442.) They endeavored to show very few 3 line shipments, whereas Dolese and Shepard are located on the Chicago & Illinois Western, which has no direct connection with a good many lines, although in the Lowrey tariff, 21 series, an industry on that line which would be Dolese and Shepard is given the 2 line basis of rates for 3 line hauls within the district. It is not claimed that change will be made in that and shippers do not propose this change though it has been stated on the record that stone producers, (Tr. 1442) are in favor of an all commodity basis within the district.

Cross-examination.

By Mr. Davis:

The Lowrey Tariff only names rates for 2 and 3 line hauls, it does not include single line. The 3 line haul is 10¢ higher than for 2 lines and wherever Chicago & Illinois Western is accorded direct interchange rate or the 50¢ rate, though it does not make direct connection with the other road, the stone company has an advantage of 10¢ under the Lowrey adjustment. The Chicago & Illinois Western switching tariff shows they do not have these direct connections. (Tr. 1443.) Under the carriers' proposal the rate for a 3 line movement would not automatically become 4¢ from points on the Chicago & Illinois Western. It would not under the tariff you have on file, because it shows that road has a direct interchange with [fol. 933] these lines when as a matter of fact it does not. That has been the situation ever since the Lowrey Tariff was established. There have been certain adjustments

within the district which equalize one stone producer with another and is the same adjustment that we have been seeking from the Joliet district for a good many years.

R. C. DAVIDSON, called on behalf of respondents, was sworn and testified as follows:

Direct examination.

By Mr. Davis:

I am general freight agent for the Chicago, Rock Island & Pacific Railway Co., at Chicago. Generally speaking, my views coincide with those of Mr. Behrle, freight traffic manager of the Chicago & Alton, given by him this morning, but with this exception; I do not agree that rates from zone 1 points on sand, gravel and crushed stone to points in the Chicago district should be the same as within the Chicago District. The Commission should recognize the commercial situation existing in a common market like Chicago with district producers vs. outside producers and fix a level of rates in the district that will make the level from zone 1 points or outside zones on a more comparable basis with the level within the district. (Tr. 1445.) In the Commission's decision, in Docket 19557, a spread of 5¢ per ton between single line road haul rates to Chicago and single line rates within the district was proposed. The 60¢ rate was not fixed within the district, but the 65¢ rate was made with relation to the proposal of 60¢ within the district. The Commission fixing a level of rates under this general investigation in the District should not make the spread less than 5¢ per ton within the district as against zone 1 points. There are no line haul rates under con- [fol. 934] sideration but my statement is based on other statements which have been made here today and which are already of record in this case. (Tr. 1446.)

Cross-examination.

By Mr. McCornack:

The Rock Island has a one line haul from Rockdale to the Chicago District over which we handle sand and gravel

to Chicago, in competition with crushed stone within the district.

Cross-examination.

By L. A. Behrle:

It is self evident there should be some spread between the district rates and the rates from Joliet regardless of single line or joint line hauls. If the spread is good for a single line it would be good for the joint line haul. (Tr. 1447.)

Examination by Examiner Faul:

While an answer to your question should be based upon a cost study which I have not made, offhand, I would say that it would be more expensive to handle a road haul shipment from points outside the district than between points within the district and even so, they should be related to the rates within the district but from outside points rates should be somewhat higher than from points within the district, and that the rates within the district should not be less than 5¢ under, or more than 5¢ under the rates from outside points. (Tr. 1448.)

Cross-examination.

By Mr. Livinghouse:

I do not propose any increase from outside the district into Chicago but the rates from outside points are higher than the rates within the district today. (Tr. 1449.)

Mr. L. A. Behrle: The situation is an impossible one under present rates. The Commission has fixed 65¢ from the first zone outside, to the Chicago District, which pro- [fol. 935] duces $32.50 revenue, minimum 40,000 pounds, which applies from within 50 miles of Chicago from any point in the first zone, either in Indiana or Illinois. The $24.00 minimum or the present $19.00 minimum does not apply to sand or gravel.

J. S. Brown, recalled, testified as follows (Tr. 1451):

Direct examination.

By Mr. H. J. Campbell:

I have prepared Ex. No. 89. (Said exhibit received in evidence, marked "Ex. No. 89, Witness Brown.") (Tr. 1452.) It consists of 22 sheets. I stated at the previous hearing that Chicago was not treated as liberally in the matter of absorption of crosstown switching charges on grain and grain products as was the case at other markets with which Chicago people compete. (Tr. 1452.) This exhibit shows rates on grain and grain products for intradistrict movement at other grain markets and milling centers, principally in the West. It shows what may be termed "reciprocal switching rates" charged by roads doing switching incident to road haul, either preceding or following roadhaul. Such rates are not in this case, but are shown as a matter of information and the rates referred to are designated as intradistrict. (Tr. 1453.) The rates of different railroads in the other markets vary. One may charge more or less than the other. One may charge more to and from one connecting line than it does to and from another in the same city. They are variable rates just as at Chicago, indicating that they were not made in those other cities with respect to cost any more than were the rates in Chicago. We make the point by this exhibit and our testimony that the measure of rates in Chicago, and the reasonableness of the rates, are properly comparable with those in other cities where there is a substantial crosstown [fol. 936] movement of grain and grain products. (Tr. 1453.) We think the investigation in Chicago of rates on grain and grain products intra-district should not be made unless at the same time the Commission institutes an investigation of the same scope at other markets with which we compete, because grain sold in Chicago from any producing field cannot command a higher price, export or domestic, than the same kind of grain sold from any other market in the United States. (Tr. 1454.) Crosstown switching, whether or not absorbed by the carriers, is something that should be made a part of Docket 17,000, part 7, under the Hoch-Smith resolution, because any increase in existing charge or in any rate above a nominal figure for

switching grain or grain products in any large terminal or primary market not absorbed, affects the price, to the producer because the margin of profit in the handling of grain is so small that no particular market or dealer could stay in business if his total charges are higher than his competitors. (Tr. 1454.)

This exhibit shows rates at the Missouri River markets, St. Louis, East St. Louis, and Minneapolis, but we have competition at other places where the switching is less in volume than at the points named. The other markets are such as Milwaukee, Duluth, Indianapolis, Ohio River, and similar ones in Central Freight Association territory, but which compete with all other markets. In the term "grain" I include field seeds and grass seeds, on which rates are based generally with respect to the grain rates.

Page 1 of the exhibit shows rates of the Santa Fe at Kansas City, Missouri-Kansas. The last item shows 2½ cents per 100 pounds, minimum 80,000 pounds, grain from elevator A on Santa Fe to a connecting line, which is the highest rate to be found for switching grain at any point in the [fol. 937] West, and higher even than the Santa Fe charges from a connection to an elevator; and for the reason that the railroad transporting that grain or its products from Kansas City to any point where the rate is 10 cents per hundred pounds or more absorbs that 2½ cents per hundred pounds. (Tr. 1455.)

Should the Santa Fe switch grain from elevator A to a connecting line and that was switched from a connecting line to a mill, and the products of the grain should move out via the Santa Fe to Chicago, St. Louis or any other place, the Santa Fe would absorb its own switching charge of 2½ cents per hundred pounds, the switching charge on the connecting line on wheat into the mill, and in addition the switching charge from that same connecting line of product out to its connection with the Santa Fe on the outbound road-haul shipments. (Tr. 1456.) In the previous hearing, page 936, I mentioned this.

The exhibit shows differing charges on grain to elevators of the Santa Fe when from different railroad connections. Some are $4.95, some $8.10 per car, and are quite generally higher, not only on this page, but on other sheets than the so-called railroad switching rate for identically the same service; the only difference being that in road-haul service

it is considered a reciprocal switching charge while on crosstown it is not.

Page 3 shows charges of Chicago, St. Paul, Minneapolis & Omaha Railway at Minneapolis, intradistrict charges being $1.80 and $2.25 per car, minimum $6.30 for through movement; meaning if a two-line haul and the charge for each railroad was $2.25, making a total of $4.50, the shippers would have to pay this minimum of $6.30. If a three-line haul, resulting in $6.75, that would be collected. The principal absorption at Minneapolis is on outbound road-haul business on the grain products moving from mills to [fol. 938] storage warehouses, later reshipped in road-haul movements. This is the only purely crosstown switching absorbed in Minneapolis, but the charges are very low compared with Chicago or elsewhere. (Tr. 1457.)

Page 4 shows rates of Chicago, Burlington & Quincy at Council Bluffs, Omaha and Kansas City.

They are about the same in Kansas City as the Santa Fe, except the Burlington makes distinctions on the lighter weight grain; the latter, from an elevator on its line to a connecting line an intra district movement charges 2¢ per 100 pounds, minimum 60,000 pounds on grain except oats and on the latter 2½¢, 40,000 pound minimum or ½ the minimum of the Santa Fe for a similar movement. (Tr. 1457.)

The Burlington's flour charge is 2½¢ minimum 40,000 but all of these charges are absorbed when the movement is outbound for road haul. Sheet 6 shows Great Western's charges $2.25 for road haul between connecting lines and industries at Council Bluffs but for the same haul on intra district business it is $4.95. Its single line haul is $6.30 and at Omaha its charges are as low as $2.25 on road haul and intra district as low as $4.95. (Tr. 1458.) Between connecting lines at Omaha, and elevators and mills in Council Bluffs, in crossing the bridge is only $2.25 per car. Page 8 shows charges of Chicago, Milwaukee & St. Paul at Minneapolis. Intradistrict charge from connecting lines to industries on grain and grain products $2.25 per car with proviso that minimum through charge shall be $6.30; grain and grain products from industries intra district 15½¢ per net ton subject to minimum charge of $6.30 for through movement which might involve 3 lines but generally 2 lines. (Tr. 1558.) Intradistrict movement be-

tween industries on its own line the grain and grain products rate is the same, $6.30 per car, being less than on [fol. 939] other traffic. Page 11 shows Illinois Central charge between Council Bluffs and Omaha or South Chicago on grain is $6.30 per car, or more than twice the Chicago Great Western charge for the same service across the Missouri River, which is likewise absorbed by outbound carriers on the outbound movement. Page 18 shows charges at St. Joseph, Missouri, in Mr. Boyd's tariff, issued for all railroads on joint haul switching except grain, grain screenings, railway equipment, coal and coke. The charge for joint haul between two industries on two different roads on grain, grain products, hay, seed, alfalfa feed, alfalfa meal and molasses feed, $9.00 per car, or equivalent to $4.50 for each line in a 2 line haul. Single line haul is $6.30 except on grain from elevators on the Union Terminal Railway to mills on the same railway. (Tr. 1459.) Pages 19, 20, 21 and 22 show the situation at St. Louis, the last 2 pages covering switching charges incident to road haul business. The intradistrict charges shown on pages 19 and 20 between one railroad and its connections to and from locations in certain groups are as low as $1.80 per car. In some instances the minimum charge is $6.30 for a joint haul of 2 lines or more. The comparison of the present cross town switching rates in effect in Chicago on grain, grain products, etc., with the rates shown in this exhibit with similar rates shown in this district indicate that the present Chicago rates are reasonable or that they are high enough and that they should not be increased although there are no car rates on grain products at Chicago such as you will find in the exhibit applying at other markets. (Tr. 1460.)

The total capacity of Indiana elevators in the district, including that of the American Maize Products Co., which is not a mere elevator, devoted to merchandising is 1,675,000 bushels, or a little over 3% of the total capacity in the district. Though rates on grain and grain products are on the Lowrey basis for joint hauls we feel that the rates on [fol. 940] grain products should not be further increased. They should be closer to the per car basis on grain. Grain products do not load as heavily as grain but that is no exception, in the Chicago District as compared with other districts. (Tr. 1461.) The requirement for minimum load-

ing in the Chicago district is greater than in other cities which in some instances at such cities is 40,000 pounds, being the general minimum throughout Western trunk line territory. At those points a car load of products may move to Chicago from an outside mill and receive delivery at the flat Chicago rate for 40,000 pounds where our cross town movement must be loaded up to 60,000 pounds or at least that much weight must be paid for if it is not in the car. (Tr. 1462.) The position of those engaged in that business is that the rates should be reduced instead of increased and if increased, we repeat what we said at the previous hearing, that the charges should be absorbed and if necessary to make a second delivery, that should be absorbed also. (Tr. 1462.) We are not in accord with the theory of the all commodity basis. Mr. Beyers referred to the birth of the all commodity basis with which I had something to do. It was thought at the time that it might be considered a nominal rate although higher than in other places, especially the minimum which the shippers sought to get at 50,000 pounds, (Tr. 1462) but a road doing much switching for other railroads would not submit to lower than 60,000 pounds minimum for reciprocal switching which set that figure for cross town switching. (Tr. 1463.)

The important part of the Lowrey agreement effective in tariff form in 1911 was the uniform application of Chicago rates for all railroads to and from all industries which placed the Chicago & Northwestern on a parity in so far as being in the South Chicago District is concerned, with a railroad in the South Chicago District. Comparing that [fol. 941] railroad with the Rock Island, each are strong competitors for traffic from the Canadian border to the Gulf of Mexico. Each has rails into Minneapolis and the Missouri River. The Rock Island enters the South West and the Northwestern into trans-Missouri territory. The Lowrey arrangement which the shippers desired, permitted the Northwestern to compete with the Rock Island and every other railroad for business in and out of the South Chicago district, the Calumet district; otherwise it could not have gotten business. It has gotten very little return business because it has not opened up its North Side district and neither has the St. Paul, to competitors to and from points West of the Indiana-Illinois State line. The Northwestern lost nothing, but gained a lot by the Lowrey

agreement. (Tr. 1463-1464.) The intradistrict business was secondary in the Bowrey agreement but it was thought proper to have some understanding as to joint haul rates so that, as on the road haul business, all shippers would be on an equality. The man using 2 lines would pay for it and the one having a single line would pay the single line rate and the man required to use 3 lines would have to pay a little more, although the single and 2 line rate was the same, which is the case today. Since then, shippers have voluntarily, after proper showing, agreed in many instances and between quite important roads, that the rate basis be changed to the higher 3 line charge instead of the previous 2 line basis so that the pushing out of railroad yards and the following of the industries outwards has cost the shippers something. (Tr. 1464.) They have in many instances agreed to pay 3 line instead of the 2 line rate though there still exists interchange points where 2 lines can interchange direct. (Tr. 1464.) The intradistrict part of the agreement was that there should be no increase in [fol. 942] the charges on grain; and that certain single line exceptions would be made even when the rate was as low as 1½¢ for 2 lines, or $9.00 per car. They propose $21.00 today and with Chicago's business growth and with the extention of railroad facilities to take care of intradistrict business but principally road haul business as well, we feel that the increases we have had are in keeping with increases made in switching rates in other cities; (Tr. 1465.) A larger percentage increase in fact than in Minneapolis, Missouri River, etc.; anywhere West of the Milwaukee-Chicago-Peoria-St. Louis line, the increases were less than we had. (Tr. 1465.) With these increases since 1911, single line exceptions have increased. With the increase from 1½¢ to 2¢ and on up to 2½¢ for 2 line hauls, single line exceptions were inaugurated and there were good reasons for them. The railroads making them had good traffic reasons for them and industries requesting them had good reasons because of competition. (Tr. 1465.) The railroads propose that nothing be considered except the cost. We think the Commission should investigate the reasonableness of the rates here compared with rates in other places; value of service to the shipper, whether it will put him out of business or not or curtail his business; and the carriers risk, etc. While the nominal rate so called becom-

ing effective in 1911 was relatively small and could not create much inequality, when advanced to a high plane, what was originally intended to be a rate equal for all, becomes unequal for the man who cannot afford to pay it on his commodity; and grain and grain products are articles which cannot afford to pay any increase, therefore, we want the Commission to understand that we are not in favor of the all commodity basis. (Tr. 1466.)

[fol. 943] When the rate goes so high we think the rule of classification should enter into it; and charging a rate of 4 cents per hundred alike on stone and higher-priced light loading goods with 60,000 pounds minimum, even though it may move from outside for 30,000, 40,000 or less, we should consider the classification theory, as it will be necessary to permit some of them to exist. (Tr. 1466.) Transit is very essential in the grain and grain product business. All interior markets and dealers have transit. (Tr. 1466.) In form Chicago has transit, because outbound rates are proportionals, in some instances 8 cents per hundred less than local rates. These proportionals will not apply on reshipments until inbound tonnage is registered, submitted to propert supervision, and on reshipment inbound tonnage billing is surrendered upon proper record kept; and the Chicago market is on a transit basis as though at an interior point, and reshipments move out on the balance of the rate instead of proportional rates.

For a two-line haul in Chicago the carriers propose 3½ cents per hundred, minimum 60,000 pounds. Minneapolis is a large milling point of wheat and rye and makes heavy shipments of all kinds of grain. Grain may move from Minneapolis to Fort Dodge, Iowa, and from thence to Chicago, at 3½ cents per hundred pounds, more than the reshipping rate from Minneapolis to Chicago. On wheat and flour from Minneapolis to Chicago the rate is 13 cents, and coarse grains and certain coarse grain products is 11½ cents per hundred pounds, which are always suggested by carriers as the lowest proportional rates existing in Western trunk line territory, influenced by water competition from Minneapolis through Duluth to Chicago and Milwaukee. (Tr. 1467.) But these rates are applicable on grain to an interior point like Fort Dodge or Des Moines; and [fol. 944] the extra charge for the considerable out-of-line haul over the roads from Minneapolis to Chicago direct is

3½ cents per hundred pounds. The movement through Fort Dodge to Chicago is 178 miles farther than direct from Minneapolis to Chicago. (Tr. 1468.) A similar arrangement obtains at Des Moines on the Chicago Great Western. Grain may be taken there, cleaned, milled or stored, and the charge, including the out-of-line haul, is only 3½ cents, though from Minneapolis through Des Moines to Chicago is 292 miles farther than the direct haul from Minneapolis to Chicago via Chicago & North Western railway.

The Rock Island has a similar arrangement via Des Moines, and their haul from Minneapolis to Des Moines and to Chicago is 291 miles farther than the direct line from Minneapolis to Chicago. The Rock Island is one of the long lines from Minneapolis, perhaps the longest, and its distance is 524 miles. (Tr. 1468.) But it sees fit to meet the short line rates of the Chicago & North Western and stands that 104 miles down and back for 3½ cents, and they propose to charge us 3½ cents here for a 2 or 3 mile haul. (Tr. 1469.) This haul bears on the competition and whether or not it is reasonable to raise our rates from $4.95 per car to 3 cents per hundred pounds for a single-line haul. There are no joint rates in the Chicago district on grain; all are single-line rates, and the rate is paid over every railroad. We pay perhaps a connecting two-line rate. Neverthless it is an independent rate for the movement over every railroad. (Tr. 1469.)

Chicago and Milwaukee are in competition, and these markets afford Western railroads like the North Western and the St. Paul the longest haul they can get. Their rails end there, and the rates are the highest they have to any places in the West. The North Western from any station [fol. 945] on its line, Clinton and west, takes grain to Milwaukee at the same charge to Chicago, though the former is 70 miles farther than Chicago. We have no quarrel with that. (Tr. 1469.) But when it takes grain from Clinton and any point west to Milwaukee, it may, after arrival there, be shipped to Chicago for nothing and the switching charge in Chicago absorbed. It is 138 miles from Clinton to Chicago, but from Clinton through Milwaukee to Chicago is 155 miles more, and a little more than twice the distance from Clinton to Chicago direct, and the rate is 13 cents. All that additional service requires no additional charge;

but for a short haul which Mr. Byers of the North Western admitted was only 200 or 300 feet from its connection to the Irondale elevator, he wants 3 cents per hundred pounds. (Tr. 1470.)

The St. Paul has about the same transit arrangement with reference to Milwaukee and Chicago as the Chicago & North Western has, but the distance for the St. Paul to Milwaukee from its stations west of Savannah is only about 15 miles greater than to Chicago direct; but when that 15 miles is added to 85 miles from Milwaukee to Chicago, you get about 90 miles additional haul for no additional revenue. (Tr. 1470.) The transit arrangements referred to on the North Western are published in their tariffs I. C. C. Nos. 9748, 9732 and 9301. Those of the St. Paul Railway are covered by its tariffs I. C. C. Nos. B-5073, B-4862 and B-5206. (Tr. 1471.)

The Columbia Malting Company at South Chicago, on the Pennsylvania Railroad and the New York Central, does considerable corn drying for the Norris Grain Elevator located on the Pennsylvania Railroad a couple of miles away. To develop the number of cars that might be taken in one switch from the malt house to the Norris Grain Elevator, I ascertained the total of 1236 cars out. The smallest [fol. 946] cut was 3 cars on December 5, 1926, and the largest cut was 36 cars on November 29, 1927. (Tr. 1471.)

On page 921 of the record, in commenting on trainload movements from the Irondale elevator to the Corn Products Argo plant, we referred to a route sheet showing a certain movement of less than 100 cars, and showed there had been a movement of a million bushels in September, 1926, requiring about 674 cars, about 2/3 of them being hauled in straight cuts and not classified anywhere. In Exhibit 83, I think, the carriers, in answering that, seemed to think the month of September is something unusual. It is not, in the movement of corn out of storage to places like the Corn Products Refining Company. (Tr. 1474.) August of this year, was much heavier, I think, than September will be. In April and May, very little Corn comes into the market and the Corn Products Refining Co., and similar plants, to keep running, buy grain in storage and have it switched to their plants and it does not go in single cars either, so September is not an unusual month. There is no month in the year that grain is not taken from storage in the Chicago

District and switched to some other elevator or some other plant. (Tr. 1472.) The New York Central's inbound switching charge of $3.60 per car is the lowest I could find on cross town business, but is not the only rate it has on cross town switching. Outbound business from its elevator at Indiana Harbor, the switching charges are higher but to a connecting line. To a connecting line, for interchange at Indiana Harbor, its rate is $5.85 per car minimum 60,000 pounds, excess, 12½¢ per ton of 2,000 pounds or fraction thereof. Grain switched from that elevator to connecting lines for interchange for points other than Indiana Harbor, the rate is $6.30 per car minimum 60,000 pounds, excess 12½ cts. per ton of 2,000 pounds or fraction thereof. (Tr. [fol. 947] 1473.) Grain switched from Albert Schwill & Co., Columbian Malting Co., and A. Dickinson & Co., to connecting lines the rate is the same as last stated as shown in Supplement 25 to New York Central Railroad, I. C. C., L. S., 806 (Tr. 1473.) The New York Central elevator referred to is operated by the Bartlett-Frazer Co. For the year ending May 1, 1928, there were switched therefrom by the New York Central to connecting lines for cross town movement—delivery in the Chicago District—328 cars, 246 being corn, 4 corn screenings, 39 oats, 17 barley and a few other scattered cars. On the first sheet covering the information so submitted to me by the operator of the elevator are the car numbers, initials, weight and dates switched to the Atlantic Elevator, Aready Milling Co., some to Corn Products Refining Co., at Argo, by the New York Central, Indiana Harbor Belt and Milwaukee roads in some cases; and where there was a 3 line haul, on the first car, the New York Central charge, for example, was $7.73, being the base rate of $5.85 and $1.88 for the excess weight over 60,000 pounds. The Indiana Harbor Belt charge was $5.40 and $4.85 for the St. Paul, making a total of $18.08 for that car. Some 2 line rates are as low as $12.43, a good many run over $13.00. Some 2 lines in connection with the Belt Railway are as high as $17.70, all depending on the weight of the car, and this basis on the excess which the New York Central charges for, over 30 tons. (Tr. 1474.) Few roads have that basis of rates now, the New York Central being about the only one. Most of them have a flat charge per car. The Bartlett Frazer Co., operated during the year ending May 1st, 1928, elevators A, B, & C, at South Chicago,

located on the Belt Railway. That company gave me the information showing the movement of those cars to show to what class of industries the business went, which were those from which the grain would either be reshipped as grain or be converted into products and reshipped out. [fol. 948] They were not movements where the second delivery would end it. (Tr. 1475.) Of the 344 cars referred to, the Corn Products Refining Co., got 141; the Nowak People at Hammond, Indiana, engaged in the feed business, got something over 20; the Atlantic Elevator, which largely serves the Aready Mill, received something like 85; the Pratt Feed Co., at Hammond got something like 20 cars, most all of which would result in a subsequent movement from the second delivery either as grain or grain products. (Tr. 1475.) That is all I have because we have not had an opportunity to examine the carriers exhibits, particularly 7-A and 11-A.

Chairman Campbell: Are there any questions of Mr. Brown.

The Witness: Just a moment further please; we have no particular interest in this but the records should show that the Chicago Switching District, although the word "switching" does not appear on the face of the Galligan tariff, is clearly defined; in both of his tariffs; the bound-ries are clearly defined. While part of that area embraces some tracks of the Elgin, Joliet & Eastern which is not a party to any of the Lowrey Tariffs, as I understand Mr. Bond's testimony, all traffic originating on the Elgin, Joliet & Eastern, whether it is at a station actually within the boundaries of the Chicago Switching District, moves outside that district to come back into it which we therefore regard as road haul business. (Tr. 1476.)

Cross-examination.

By Mr. Davis:

I represent the Chicago Board of Trade, all of its members, which embraces all elevator operators in Chicago, all of the mills, all of the feed manufacturers and all of the seed dealers. The views expressed by me represent, I think, the views of all of the members of the Chicago Board of [fol. 949] Trade. My immediate contact is with the transportation committee of the Chicago Board of Trade. The

Committee is appointed by the President and approved by the Directors, which committee is representative of all different branches of the grain and grain products trade in the Chicago District. My instructions come not only from that committee but also direct from the President. (Tr. 1477.) I have talked with the individual elevator operators with each miller, with each feed manufacturer, the Corn Products Refining Co., and the American Maize Products Company. I do not think there is any grain company doing a substantial business in Chicago that does not take the same view of this that I do. (Tr. 1478.)

Chairman Campbell: Now as to these organizations, Mr. Davis, there seems to me there is not much use in taking up the cross-examination of this witness in regard to this matter. We all know when Mr. Brown presents himself he is representing the carefully considered views of his organization and the fact that there are different firms members of that organization, seems to me are bound unless they come here and offer themselves in repudiation of his representation. It is a good deal like Mr. Galligan's organization, he represents it and represents the combined view of it unless some of its members come in and repudiate that.

Mr. Davis: Yes, I understand that, Mr. Chairman, but I was just leading up to ask Mr. Brown whether or not he knew that the Rosenbaum Grain Company agreed or disagreed with his statement. (Tr. 1478.)

The Witness: I have talked to Mr. Rosenbaum and he entirely agreed with me. I talked with him before I took the stand the last time in May, and have talked with him since; and I think the views I have expressed today are his views today. What he may have told you or somebody else, [fol. 950] of course I do not know. I only know what he said to me, and he knows what my job is, too, because he was at one time my boss.

In my Exhibit 89 I do not show switching rates in the city of Milwaukee because the buyers there, for instance an industry located on your railroad, will buy grain that is on your inspection tracks quite largely, although there is a lot of the other thing. It is not at all comparable to Chicago, in size or anything else (Tr. 1479) or as a price-making market. That statement would not apply to Omaha or the Twin Cities. But I left Duluth out because I do not think it has any crosstown switching, because the business

goes into the elevators and I suppose 95 per cent goes out by lake. One of our positions in this case is that switching rates for crosstown movement of grain should not be investigated unless that movement of grain in every city covered by my Exhibit 89, and perhaps others, is considered at the same time, especially those mentioned in my exhibit. (Tr. 1480.) There are others that should be considered, such as the Ohio River and Buffalo and other places. There might be different conditions at some of those places than at Chicago, but where crosstown movement is substantially like it, as in Omaha, St. Louis, East St. Louis, Minneapolis, though not so much at Minneapolis, all those cities should be considered, or their rates should be, at the same time as ours, because we are in competition and served by the same railroads. (Tr. 1481.) Wherever increases in crosstown switching rates on grain are proposed in Chicago, I do not think they should be dealt with unless in connection with the Hoch-Smith resolution. (Tr. 1481.) As to other commodities, not dealing with them I do not know. I do not care to express any view on anything other than grain, grain products, seeds, and other things that go with them, or anything coming under that general classification.

[fol. 951] In my testimony in May I merely stated that the grain bought on the Chicago market but subsequently moved by water, varied each year. In my fourteen years' experience the movement down-lakes varies every year. To all lake ports I have known it to be as low as 11,000,000 bushels and as high as 125,000,000 bushels. What I said in that connection in May was that taking the year 1927, I knew the carload export all-rail business was less than 3,000 cars. I have since looked it up and that is the fact. (Tr. 1482.)

The outbound road does absorb switching charges in Chicago when the grain moves out, that is, outbound switching, but not crosstown switching. If grain has no subsequent movement with the Chicago district after arrival here, the only subsequent movement it could have is to road haul out, and then the road-haul carriers absorb the outbound switching if it is switched to them by some other road. A lot of the Eastern roads have their own tracks in the elevators and mills. At certain seasons of the year

corn, for instance, arriving here, moves from one elevator to another in order to dry it. But this is not because the first elevator does not have drying facilities. (Tr. 1483.) We have here the greatest drying facilities in the country, an hourly capacity of 30,000 bushels, which does not exist anywhere else, and it provides for handling a large quantity of off-grade corn. Because of these facilities Chicago pays the highest prices for it, which draws that corn to our market to the exclusion of better grades. Elevators here buy that kind of corn, drying it in their own facilities to the extent of them; but if they buy in quantities greater than their drying facilities will handle without delaying cars, they then employ outside drying facilities such as I mentioned, like the Columbia Malting Company, and that bene- [fol. 952] fits the producer, of course. They have not sufficient drying facilities at these times, though they may be idle six months in the year, practically.

There is a mighty big movement of wheat moving from one elevator to another, due to buying or selling grain futures, but there is also quite a movement from elevators to mills (Tr. 1484), not as much as the contract delivery movement, but we have some of that. The speculative element involved in buying all kinds of grain for future delivery causes a good deal of this movement when it comes time to make deliveries. The speculator is the fellow who keeps up the prices.

When I said, regarding the Lowrey basis back in 1911, in substance, "We shippers wanted a 50,000-pound minimum," I should have used the words "We insurgents." I was with the Illinois Central Railroad at that time, and there were four other roads in addition to that one that wanted a reciprocal switching rate of 1 cent per hundred, 50,000 pounds, instead of 1 cent per hundred, 60,000 pounds. (Tr. 1485.) If that had gone through there would have been less trouble with switching afterwards, but one road, because it did a lot of switching in the lumber district where the average loading was not even 50,000 pounds, did not agree to it. (Tr. 1486.) Since that time, shippers have suggested 50,000 pounds not only as to cross town switching but also for the reciprocal allowance. In expressing the fact that we are not in favor of an all commodity basis of rates in the Chicago District, I am talking for my own people, of course, (Tr. 1486) but I do not want to be ruined

just because the other fellow may be willing to be or may have to be ruined. (Tr. 1486.) I was with the Illinois Central in 1911 and for a number of years before that. Comparing conditions that existed then with present ones, I have pointed out that the important thing accomplished [fol. 953] in 1911 was the Lowrey 20 Tariff basis which was the flat rate in and out of Chicago for all industries for all railroads, that was the big thing, but there had to go along with it, a correction, a more uniform basis on our cross town business, which, of course, was not as much then as it is now, (Tr. 1487.) which was the secondary thing but set up as a part of the agreement to make a rate of 1½¢ with some discussion as to 50,000 pounds or 60,000 pounds minimum, finally made 1½¢, 60,000 pounds. That rate has gone up 100% in some cases. I do not know whether either the railroads or the shippers at that time questioned or discussed much whether it was proper to have the all commodity basis or not. They took it, but with certain exceptions which exist today but increased somewhat. But grain always was an exception. (Tr. 1488.) Outside of grain, grain products, seeds, etc., I do not care one way or another whether they have an all commodity basis on cross town business on other commodities or not. All I am here for is to see that I get no increase in rates and if I do that it is absorbed as our competitors' cross town rates are absorbed. I think that covers the whole thing when I say that. (Tr. 1488.)

Mr. Davis: And in addition to that, outside of grain, grain products and feeds, you do not care, and you are not interested as to whether the basis of rates goes back to the condition before 1911 or not, is that correct?

The Witness (continuing): Individually, I would.

All that I am interested in is to see that there is no increase made as to grain, grain products, feed, etc., and would prefer a reduction if I could get any, though I cannot see much chance of getting any. (Tr. 1489.)

Cross-examination.

By Mr. Walter:

I do not want to get into a tangle with operating men as to whether they are operating efficiently or not insofar as the roads operated are concerned, the railroads are operat-

[fol. 954] ing efficiently, but we have thought and think the record shows that some shorter haul arrangement might be made which would be beneficial alike to the railroads and the shippers, which would interfere with some of the railroads which apparently want to operate as they do now or must operate as they do now. It takes 2 to make a bargain on joint arrangements. The Rock Island is about the only railway that will not haul its own cars for Belt connections over to Clearing; at least that was the situation once. I do not know why it does not do so, as I think all others take the drags over and bring back what is there for them. The Belt Railway charges the shipper the regular rate and I suppose the Belt has to allow the owning road some wheelage basis or some compensation for pulling those cars over to the yard and taking them away again. (Tr. 1490.) There are different ideas about operation and I would not want to go on record as saying that these railroad were not operated efficiently. (Tr. 1490.)

If we had a unified operation in Chicago, I do not care whether the systems are the same or not, and one man controlled all of the movements in Chicago, we would have shorter hauls and it probably would be done more economically. Whether that is good for the shippers and the railroads or not, I do not know, and I would rather not say. (Tr. 1493.)

Redirect examination.

By Mr. H. J. Campbell:

In regard to the cities listed in Exhibit 89, I took them because the transportation conditions surrounding the switching movement are somewhat similar to the switching movement in Chicago; but I took them largely because they are our principal competing markets and they all have a considerable crosstown movement. (Tr. 1494.) A move-[fol. 955] ment from one elevator to another in Chicago for a short haul is not comparable with a movement between Council Bluffs and Omaha, the latter being much more expensive, and the Chicago & Great Western will haul it across the river between Council Bluffs and Omaha for $2.25. (Tr. 1494.)

These comparisons in the exhibit were used to support the question of the reasonableness of the present rates; to

measure our rates with those in other cities on the same class of business, and where quite generally I presume that conditions are about the same as they are here.

Cross-examination.

By Mr. Shank:

The rate of $4.95 and $6.30 applies on a movement in the switching district that is only incidental to the entire movement, but those rates applying to that switching movement by itself, pays the actual cost thereof just as much as do these rates in other cities that I have shown here. (Tr. 1495.) I am not trying to reach a uniform basis—far from it, but I do not say that I would rather have no Lowrey agreement than to have one. I said that in so far as our business was concerned we do not want it in the Lowrey tariff if there are going to be increases; and grain has never been in the Lowrey tariff.

The reasons existing at the time that kept grain out of the Lowrey tariff exist today, and they have decidedly increased, inasmuch as these other Western markets have increased their business. They have grown up and their absorptions have increased. (Tr. 1496-1497.) At Kansas City, Missouri, the situation has become so competitive with mills in interior Oklahoma and Kansas, that the Santa Fe, the Rock Island Railway and all others, absorb the crosstown switching at those interior points like Wichita, [fol. 956] Hutchinson, Enid and Oklahoma City. That is the way that sort of thing spreads, and is the very object of crosstown switching.

Brick would not be bearing the burden of the cost of handling grain. You are comparing brick with brick, and I am comparing grain with grain, and hence there is no comparison between brick and grain. I do not agree that in the Chicago district it has got to be on the whole or not at all. (Tr. 1497.)

Answering your question as to it being fair to require $15.00 on a carload of brick as against $6.30 per car on a carload of grain, perhaps of equal weight and for an equal haul in the disfriet, I say there is no comparison. Your competition is with the other dealers engaged in the brick business. Our competition is with the people engaged in the grain products business, and I have shown what they

pay in other cities. If you are paying too much you ought to come in and try to have your rates reduced.

Chairman Campbell: Your answer is based wholly upon competition?

A. Surely.

Chairman Campbell: Suppose you were conducting an investigation, as we are here, in which we are obligated to find as early as we can the reasonable rate for the movement; would you say that brick ought to pay the same as grain? (Tr. 1499.)

The Witness: I would say not. I do not care what brick pays, Mr. Commissioner.

Examination by Mr Shank, continued:

I have nothing to say with reference to competition between sand, gravel and brick; I have no interest in it.

Examination by Examiner Faul:

[fol. 957] If as a result of the cost study made in this case it should be found that it should cost in excess of $6.30 to handle traffic in the Chicago District, I still feel that grain should remain on the present basis in view of what I have said. There should be no increase but if it is increased, it ought to be absorbed by the railroads themselves, they do it at other places. (Tr. 1500-1501.)

Cross-examination.

By Mr. Connell:

As between the Western road that brings the grain in or the Eastern road that takes it out, the charge should be absorbed by the outbound road. If there is an outbound movement it should absorb the cross town switching, even on a shipment that had first been taken into the Northwestern elevator and there sold because that is the practice. This absorption should be limited to 1 cross town movement. That is, you could have 3 movements just like you have in these other cities out in the West. (Tr. 1501.) The switching movement to the first resting place then cross town then out again. On that movement, the inbound and outbound movement is absorbed today in Chicago. (Tr. 1502.) We want another inbound switching movement to

be absorbed depending on whether there was an outbound haul or not. We would expect the inbound carrier to give us the second switch if the grain or the grain product did not move any farther, just like they do in St. Louis. There is no switching from the New York Central elevator where the grain goes out over the Lakes. I could not tell the percentage of grain coming to Chicago that moves under cross town rates for the purpose of conditioning, (Tr. 1502) but I showed something like a dozen years cross town movement of grain and it varied, I think, from 10,000 cars per year up to 25,000. That included all moved for speculative purposes or contract deliveries—all cross town movement. [fol. 958] (Tr. 1503.) In the 2 years that we had 25,000 cars, the cross town movement of corn was augmented by the need for conditioning. That need augmented that movement largely. (Tr. 1503.) All grain moving to elevators located on the Eastern roads such as the New York Central, moves out by rail. It cannot move out by lake because they are not located on the lake.

I said the movement by lake from Chicago varied, (Tr. 1503) from 11,000,000 bushels up to about 125,000,000 bushels by lake, but the percentage I could not give, it might be 30 per cent or 40 per cent in some years. Generally speaking, grain moving into the New York Central elevator does not move out of Chicago by lake because it is already in an interior elevator and it costs money to switch to a lake elevator. I gave you the movement for 1 year from that New York Central elevator via lake, of 326 cars and we know that elevator ships more than that and it would be largely an all rail business on which presumably you get the haul. (Tr. 1504.)

Chairman Campbell: We will adjourn until 9:30 o'clock tomorrow morning, daylight savings time, September 20, 1928. (Tr. 1505.)

Pursuant to adjournment, hearing reconvened at Chicago, Illinois, September 20, 1928 at 9:30 o'clock A. M.

Mr. Davis: I notice in Exhibits 8-A and 11-B, an error regarding the proposed revenue and proposed rates on account of Chicago Heights Terminal Transfer Company and the Baltimore & Ohio Chicago Terminal. We are rework-

ing these exhibits to send them to the printer and hope to have the new ones in here sometime tomorrow.

Chairman Campbell: That will be all right, I am sure. [fol. 959] Mr. Davis: And you remember there were certain documents you wanted us to furnish to the Commission, (Tr. 1507), the Illinois Commissioner and the Shippers, those bills showing the shipments and who made them and things like that. We have compiled those exhibits and furnished them to the Interstate Commerce Commission, the Illinois Commission and Mr. Walter, but we do not want a general distribution of them. Mr. Walter wants them given some number or identified some way in the record so that he may have the opportunity to refer to them in briefs and things of that character.

Chairman Campbell: I think you had better give them exhibit numbers, the next two numbers.

Mr. Walter: Details of switching cost by element number will be Exhibit No. 90 and Details of Switching and Clerical Cost by Index Numbers will be Exhibit No. 91; which were offered and received in evidence, marked respectively, "Exhibits No. 90 and No. 91." (Tr. 1509.)

M. H. Strothman was sworn and testified as follows:

Direct examination.

By Mr. H. J. Campbell (Tr. 1509):

Am supervisor of traffic of Washburne-Crosby Company, having mills, plants and elevators at Minneapolis, Kansas City and Chicago, over which I have direct supervision of their traffic matters. (Tr. 1509.) Am familiar with the movements of traffic at those different plants, including switching movements. I heard the testimony of Mr. Brown and have read his Exhibit No. 89, and the facts therein, so far as I could check them, on movements coming to our mills are correct.

Mr. H. J. Campbell: Now, Mr. Strothman, having the facts as shown in that exhibit and as testified to by Mr. [fol. 960] Brown, what would you say as to the resonableness of the existing rates in Chicago? That is, from one industry to another, on grain, as compared with the rates

at those other two cities, namely, Minneapolis and Kansas City, where you conduct milling operations?

Mr. Davis: One moment; that is objected to. (Tr. 1510.)

Charman Campbell: Let him answer; it calls for the opinion of the witness. I will let him answer the question. (Tr. 1511.)

The Witness: The Chicago rates are higher. There is more absorption of charges at Chicago. The rates generally from elevators to a mill in South Chicago are higher than at Minneapolis or at Kansas City. While the rates are high on our cross-town movement, running from $28.00 to $30.00 per car, it is all absorbed. In speaking of the $28.00 to $30.00 per car, I mean that that includes all of the switching operations in and out and crosstown; from the time it leaves the elevator where it is first unloaded until it goes out on the line haul road. (Tr. 1511.) Having in mind the switching charges at Minneapolis and Kansas City, as well as those at Chicago, I would say that these charges were not inaugurated by the railroads on the basis of cost of operation. They could not have been, because of such variations all the way through. It is an economic factor to make switching rates on grain as low as possible. It is an economic necessity for the producers to move their grains to some terminal market. They cannot hold it. That comes into elevators at Chicago of various types necessary for the milling of our product. Regardless of what our stocks may be in our own elevator, where we buy direct, perhaps in Kansas City, there are times when there is grain in other elevators that it is necessary for us to have. The large elevator storage capacity at primary markets like Minneapolis, Chicago and Kansas City are part of the [fol. 961] economic plan of merchandising of grain. (Tr. 1512.) Any charge added to the through rate or the combination rate is simply an added cost, the same as an added charge on traffic from Minneapolis to Chicago. There is keen competition between a miller at Chicago and one located at Minneapolis and Kansas City, in which switching charges would be a factor.

Have had thirty years' of traffic experience. There is a difference in the conditions surrounding movement of grain or sand, and with respect to other commodities generally. The competitive feature is more highly developed in the flour business and in the manufacturing of grain into grain

products, with its own labor, its own bags, and all of the incidental features, and the materials that go to make up the finished product. The carriers should not initiate an increase in any factor of the charge, particularly at a time when there is a great demand for farm relief. Sooner or later it comes out of the farmer. (Tr. 1513.) The switching charges in the other markets have been mentioned in Docket 17000, part 7, before the Interstate Commerce Commission, many of the hearings in which I have attended. About 12 years ago we considered locating in Chicago, and finally, about 7 years ago, bought the Star & Crescent plant on the rate basis now in effect. In my opinion the switching charge at Chicago on grain products or grain milled in transit there, should be absorbed entirely, either by the inbound carrier or by the outbound carrier—by the outbound carrier from point of milling, as is the case now, and by the inbound carrier on the second movement. (Tr. 1514.)

Cross-examination.

By Mr. Davis:

If all switching charges on grain, grain products, seeds and everything that comes into what we handle, were ab- [fol. 962] sorbed either by the inbound or the outbound carrier, I would not care what the switching rates here in Chicago were. But we have been willing to go along on the charges as they now stand; we want no increases. (Tr. 1515.) But if there are increases, we want them absorbed. The switching rates here on grain and grain products, etc., are higher than they are at Minneapolis, where we have elevators and mills as well as at Chicago.

We have mills and elevators at Buffalo. There is no relation between the switching charges at Minneapolis and the switching charges at Buffalo, independent of the line haul, because there are too many factors that intervene between Minneapolis and Buffalo. Regardless of the switching situation in Buffalo, the lower cost of transportation on the Northwestern and Southwestern grain to that point gives Buffalo quite an advantage.

Chairman Campbell: Did you ever sit in at a hearing in Minneapolis?

A. I think I have. (Tr. 1516). We do not think the switching rates at Minneapolis lower than at Chicago gives preferential treatment to Minneapolis or makes a discrimination against Chicago, because I think switching charges at Minneapolis should be absorbed. I do not care what they are; I think they should be absorbed. I would not say they are too low as compared with Chicago. Minneapolis is being preferred to the extent that its switching rates are lower than in Chicago, and considering the proposed basis going into effect at Chicago. As to present basis, we get one-line haul for $4.95 and the proposal is to make that $24.00 per car, or a 400 per cent advance. (Tr. 1517.) I would not say that the crosstown switching rates at Minneapolis should be the same as they are at Chicago. There might be varying conditions in connection with the cost study, but in so far as the miller is con- [fol. 963] cerned, switching charges in the terminal should be absorbed in order that markets shall all be equalized. (Tr. 1518.) By reason of the lower Minneapolis switching charges we are preferred in so far as our switching costs are concerned. Our operation at Minneapolis is a two-line haul at all times, on the basis of $6.30; when we draw grain from the outside we pay $6.30 for the entire movement. There is no movement from our elevator to our mill excepting by conveyor.

Q. You would not go so far as to say, would you, Mr. Strothman, that the crosstown movement that I have referred to as drayage charges, or drayage movement, rather, should be the same in all cities that deal in grain? (Tr. 1519.)

The Witness: I think that in so far as milling grain is concerned, they should be equalized by a pure absorption. That is my idea.

Q. That would equalize it if it were absorbed, but that is still not my question, Mr. Strothman.

The Witness: Well, you cannot set up one basis of rates in one terminal after a mill is located there and is functioning, and arbitrarily, by what really amounts to a rate advance, put that mill out of position with other mills.

Chairman Campbell: Just a moment, please. I do not think we ought to go into this matter or discrimination too far. I have let it in because it was sort of a comparison and perhaps had some bearing as to the lawfulness of the

proposed rates, but we really are not trying a discrimination case here between Chicago and Minneapolis. We have perhaps gone as far as we should.

Mr. Davis: While likewise, Mr. Commissioner, absorptions are not involved.

Chairman Campbell: Absorptions are not involved. (Tr. 1520.)

[fol. 964] We bought the Star & Crescent Mill at South Chicago several years ago. (Tr. 1520.) It is not my theory that the rates in effect at the time a mill is purchased should never be changed. Rates on grain products might be changed immediately after the purchase, so long as equalization of rates is maintained at all markets, keeping all millers on a parity. They cannot be on a parity unless they pay the same switching charges and the line haul charges relate. (Tr. 1521.)

W. J. Hammond, recalled, testified as follows:

Direct examination.

By Mr. Walter:

Testified previously in this case but desire to make an additional statement. The Indiana Harbor Belt for many years has maintained rates applicable from Indiana Harbor on certain commodities lower than the so called Lowrey basis, generally restricted in the territory to which they apply with minimum somewhat higher than the average. A rate of 2¢ per 100 pounds on acids applies from the Graselli Chemical Company's plant for a distance of approximately 3½ or 4 miles. (Tr. 1522.) Average loading of acid exceeds 100,000 pounds including box car and tank car loading. It has a rate of 2¢ per 100 pounds on billets, iron and steel and pig iron, minimum 100,000 pounds restricted to shipments between stations Blue Island and East, a maximum distance of approximately 11 miles. The scrap iron minimum is 100,000 pounds, but average loading from a record of over 2,000 cars was 107,000 pounds. These higher minima provide a guaranteed revenue of $20.00 per car against a 2½¢ rate, minimum 60,000 pounds or $15.00 per car. A rate of $8.10 per car applies on plant refuse such

as ashes and cinders which have no value for construction purposes. Steel mills and foundries particularly have large amounts of refuse to dispose of in this particular territory and the country being generally level, makes it difficult to [fol. 965] find a place to dispose of this refuse. This $8.10 per car rate applies on refuse moving in in cars that come in under load and are sent out loaded with refuse. (Tr. 1523.) A rate of $3.10 per car applies when loaded in private cars furnished by the shipper on which no per diem or rental charge is paid by the carrier and when tendered in movements of 15 cars or more on which no terminal or spotting service is required at point of origin or destination. We use that rate quite extensively, moving approximately 50 to 55 cars per day in units of 25 cars or more. In addition, we pay engine hour rental for dumping cars after reaching destination. We own approximately one half million dollars worth of equipment for handling this refuse including cars, track shifter, spreaders, a crane and miscellaneous necessary equipment. Under this method, we feel the car rate assessed more than covers out of pocket cost and is in a sense compensatory. (Tr. 1524.) Compensatory is used in the sense that it pays out of pocket cost. (Tr. 1524-1525.) Under all of these rates mentioned, a considerable volume of these commodities move to the restricted territory and because of their heavy loading and in units of 5 to 15 cars as to scrap and billets, and acid 3 or 4 cars, at a time, we believe these rates should be continued and that individual railroads where commercial and competitive conditions justify it, should be permitted to continue these exceptions to the general Lowrey basis. (Tr. 1525.) The out of pocket cost referred only to slag. Payment of mere out of pocket cost on a commodity might throw a burden on other traffic generally but this waste material, the slag, results from an inbound movement of raw materials upon which a transportation charge has been paid and railroads derive some benefit from hauling the refuse out. (Tr. 1525.) They benefit further from hauling out the finished commodities that produce the slag, and there [fol. 966] must be some reasonable low rate permitting the manufacturers to dispose of waste material of this character. Otherwise, they will have a heavy burden and a problem that will be difficult for them to solve. My impression, Mr. Commissioner, is that adequate revenue has

been paid on the inbound material to justify continuance of the present rates on the slag movements and that the slag movement itself on the rates applicable cause no loss to the railroad for the service including investment on the engine, (Tr. 1526) as we furnish the cars, the tracks and the railroad doing no spotting at either end, there is no possible burden on other traffic, being a different movement, separate from the general class of traffic.

Mr. Bond suggested yesterday that the Chicago District consists of something outside the Chicago Switching District. Galligan's I. C. C., No. 98, Illinois Commerce Commission 43, Indiana Public Service Commission 18, note 2, on page 8, defines the Chicago District and includes the boundaries of the Chicago Switching District, (Tr. 1527-1528) which is as follows:

"Chicago District, definition of

Beginning at a point on the shore of Lake Michigan, due North of Clarke Junction, Indiana; thence south to and including Clarke Junction (including freight interchanged between the Indiana Harbor Belt and Wabash at Tolleston, Indiana), thence southwesterly and south just west of the Elgin, Joliet & Eastern to but not including Ivanhoe, Indiana; thence southwesterly to and including Hessville, Indiana; thence westerly along the north bank of the Little Calumet River to a point just west of Globe, Illinois; thence northwesterly west of the Pennsylvania (Logansport Division) to a point just south of Dolton, Illinois; thence southwesterly to a point just south of Homewood, Illinois; thence northwesterly just west of the Grand Trunk to a point just west of Blue Island, Illinois; thence [fol. 967] north and northwesterly just west of the Baltimore & Ohio Chicago Terminal and Indiana Harbor Belt to a point just south and west of McCook, Illinois; thence southwesterly just south of the Chicago & Illinois Western to and including Willow Springs, Illinois; thence northeasterly just north of the Chicago & Illinois Western to a point just west of McCook, Illinois; thence north and northwesterly just west of the Indiana Harbor Belt to a point just south and west of Melrose Park, Illinois; thence west just south of the Chicago & Northwestern to and including the Proviso transfer yard of that company; thence north to Addison street; thence east to a point south and west of Godfrey Yard on the Chicago, Mil-

waukee & St. Paul; thence to a point just north of the Chicago, Milwaukee, & St. Paul; thence east to the line of the Minneapolis, St. Paul & Sault Ste. Marie; thence northerly just west of the Minneapolis, St. Paul & Sault Ste. Marie to and including Des Plaines, Illinois; thence southeasterly just east of the Chicago & North Western Railway to the city limits of Chicago, thence east just north of the said City limits of the Mayfair cutoff of the Chicago & North Western; thence northeasterly just west of the Chicago & North Western to and including Greenwood Street Station; thence southwesterly just east of the Chicago & North Western to the city limits of Chicago; thence east just north of city limits to the east line of Chicago avenue or Clark street; thence northerly on the east line of Chicago avenue 725 feet; thence east to the east line of Chicago, Milwaukee & St. Paul; thence southeasterly to center line of Howard street; thence easterly on the said center line of Howard street to the shore of Lake Michigan; thence southerly along the shore line to the point of beginning."

[fol. 968] Cross-examination.

By Mr. Pierce:

Inland Steel Company has a plant at Chicago Heights and one at Milwaukee. If the relationship in rates between Chicago Heights and the district is disturbed as a result of this case, we would, in order to meet competition, possibly have to allocate tonnage now produced at Chicago Heights to the Indiana Harbor Plant. (Tr. 1530-1531.)

Cross-examination.

By Mr. McCornack:

The slag referred to cannot be termed commercial slag. We get nothing for it and it costs us around $10,000 per month to dispose of it. It has no value. This is purely waste material which we dispose of at our own expense. The rate today is open for the use of anybody who care to use it. (Tr. 1531.) Am not familiar enough with the term commercial slag to say that it should take a higher rate than this refuse slag. Ours is a refuse material of no value to us and we receive no compensation whatever for

it. It is used for no purpose at all, being dumped in some low spot. (Tr. 1532.) We have never sold it for filling purposes to the City of Chicago or to any other person, or for any purpose. (Tr. 1532.) The commercial slag and crushed stone in the district take the 50¢ rate.

Cross-examination.

By Mr. Davis:

We do not sell this refuse slag to contractors. We did give some to the Indiana Harbor Belt and wish it would take it all. We gave some to other roads but we received nothing for it whatever. We used sand to build the Markham Yard; none of our slag moved there. (Tr. 1533.) We are not opposed to an all commodity basis of rates in Chicago but believe (Tr. 1533) there is full justification for the continuation of these exceptions where competitive or commercial conditions exist and that they should be con- [fol. 969] tinued. (Tr. 1534.) The heavy loading of these commodities is a consideration for these exceptions. There are many commodities involved in this case now taking the all-commodity basis that load heavily. A lot of ours other than named load very heavily.

Heavy loading is not an element that can be given sole consideration, but it is one of the factors. Another is that billets, slabs, pig iron or scrap, which are subject to process of further manufacture, produce something from which carriers get additional revenue. The initial movement is not the final transportation charge which carriers ultimately receive for the movement. (Tr. 1534.) Scrap iron is one of the commodities and is shipped to any producer of steel. They all use it. As to junk dealers, they usually secure scrap from country dealers, which is shipped to the yard in the Chicago district, there classified into certain grades, which then moves, after sorting and grading, to the steel mills. (Tr. 1535.) The junk-dealer sorts it at his yard or place of business, taking out that which has commercial value and which suits the needs of the steel mills, and the mills buy it if the prices are right, and that is a commodity we want on the excepted basis. It is a very low-grade commodity, must be assembled in small quantities from various producers, farmers and small manufacturers; when assembled at its initial point

is of varied character, size and description. It is shipped to scrap dealers and there sorted, and being a low-grade commodity, must move at very low rates in order to move at all. (Tr. (1536.) Iron ore is our largest raw material coming in by boat, but which has borne a rail charge from the mines to the docks prior to boat shipment. From those docks it reaches our plant by water. Our docks are at Ashland, Superior and Escanaba. The rail movement of the ore to docks is comparatively short, and carriers serving [fol. 970] our plant do not participate in the ore haul from mines to docks. (Tr. 1537.)

Cross-examination.

By Mr. Shank:

We think we should have the general commodity basis with such exceptions as are in effect today, which have been in effect for a good many years. That is the basis in effect today, and the one considered by shippers and all the railroads in all of their negotiations, and so far as I know, it is the thought of the shippers today that the present basis be continued. (Tr. 1538.) I just stated, Mr. Shank, that I wanted the all-commodity basis on two- and three-line hauls, and such exceptions on single-line hauls as commercial or competitive conditions justify. (Tr. 1539.) I restrict that to single-line hauls because we would get into the destruction of the all-commodity basis if it is spread too far. There might be justification for it under some movements, but as a whole these individual single-line exceptions are relatively short hauls of heavy-loading commodities or some particular commodity having a peculiar condition surrounding its movement and a justification that would permit the rate to be published on an excepted basis. (Tr. 1539.) In eliminating these heavy-loading commodities for single-line movements we are not breaking down the basis for an all-commodity adjustment for two or three-line hauls. There are these single-line exceptions now, and as to two- and three-line hauls, an all-commodity basis is applied completely. These exceptions could be continued without general disturbance; in fact, no disturbance of the all-commodity basis for two- and three-line hauls.

The acid movements referred to are in shippers' private tank cars and they receive no allowance from the carriers.

Redirect examination.

By Mr. Walter:

[fol. 971] The exceptions mentioned in connection with the iron and steel industry apply where transportation conditions are different and in a restricted territory where the steel mills are located. (Tr. 1540.) They are exceptions made by the individual lines operating in that territory and made after full consideration of the circumstances surrounding the movement. They relate to products of the iron and steel industry and to one-line hauls. The acid referred to is practically all shipped to the iron and steel people. (Tr. 1541.)

Recross-examination.

By Mr. Davis:

This general theory justifying exceptions would apply to any industry, whether iron or steel. A certain part of our coal comes in by water. (Tr. 1541.) A large volume, however, moves in all-rail. Probably 60 per cent of our coal comes by water, but there is a rail movement from the mines to the lake on that. After navigation closes it would move all-rail. Coal we use during the period of navigation does not all move by water. We receive coal the year round from the Illinois mines and also from Eastern mines; and the coal moving by water has rail transportation up to the ports. (Tr. 1542.) The outbound product of the steel mills would move by rail. (Tr. 1543.)

Recross-examination.

By Mr. McCornack:

I cannot conceive of any special conditions that would justify any rates being higher than the Lowrey basis for switching service. (Tr. 1543.)

J. D. FORREST, recalled, testified as follows:

Direct examination.

By Mr. Walter:

[fol. 972] On page 153 and a few following pages of Exhibit No. 83 are set out briefly the allegations made in my Exhibit 23, to which carriers take exception. (Tr. 1544.) My Exhibit 23 was a report of actual movements of a number of shipments made during the test period by representatives of our company who rode the cars, and indicated precisely the movements that were made. In that I set up the description of the service that was given on the railroad working papers, which in general involved more elements than the movement actually involved. To some extent carriers deny the statements in my exhibit, but I assert they are absolutely correct. We show precisely the movements of the cars, made at the time they moved. (Tr. 1545.) The route of movement shown in the cost study and the service there shown includes services not ordinarily performed on that movement. (Tr. 1546.)

The first movement mentioned, Indiana Harbor Belt route No. 222, shows classification and movement from Norpaul to Melrose Park, covering switching to National Malleable Casting Company of 5 cars, as to which the carriers state: "The fact that a car ridden by one of Mr. Forrest's men in August, 1927, did not move into Norpaul was due to the fact that this car was given preferred service." No preferred service was requested and no request for a rush movement was made. If any preference was given it was for some reason of the carriers themselves. In several instances the carriers have accepted or practically accepted our statements regarding actual movements, and then set up a different cost. Am not able to analyze these costs, not having access to their working sheets. In a number of instances carriers taking the much shorter movements in general shown on my exhibit leave out many of the elements which are in the carriers' exhibits or in the carriers' [fol. 973] work sheets to begin with; they say following this shorter and similar line movement the cost would actually be higher than they showed originally. Whether higher or lower, these numerous departures from the working statements (Tr. 1547) of the carriers indicate a good

deal of carelessness and inaccuracy in the cost studies. (Tr. 1548.)

My Exhibit No. 92 shows division of our switching movement for the entire year 1926 between interstate and Illinois intrastate business. We have no Indiana intrastate business. During 1926 we moved 32,207 cars in the Chicago switching district, 30,069 intrastate and 2138 interstate, or 96.46 per cent were intrastate and 3.54 per cent were interstate. (Tr. 1548.) The exhibit details the various commodities. The statement shows the precise number of cars in each class for each commodity. (Said exhibit was offered and received in evidence and marked "Exhibit No. 92, Witness Forrest.") (Tr. 1549.)

My Exhibit No. 93 shows number of coke movements to territory where arbitraries over Lowery basis rates apply on the Northwestern and the St. Paul roads. It covers shipments to these particular points in 1926 and the Exhibit includes a list of the cars moving over the same combinations of roads in the same year at the regular Lowrey rate of 60¢ per ton. On the Lowrey rate, there were 3,778 cars, 818 cars at 10¢ above the Lowrey rate, 4 cars at 90¢ rate and 985 cars at $1.01 rate; these excess charges above the 60¢ rate for the year, amounted to $14,897.51. In addition to this movement, we shipped 44 cars by the Short Line, Belt Railway and Northwestern at a rate of $1.13; 95 cars by the Short Line, Belt and St. Paul at $1.26. These were not included because deliveries were made on team tracks. (Tr. 1550.) There should be some reasonable additional charge for team track deliveries over deliveries on industrial tracks but a rate of $1.13 for team track de-
[fol. 974] livery in Chicago not very far on the North side, is 12¢ more than for team track delivery in Evanston and other places; and the $1.26 team track delivery charge is 25¢ more than the line haul rate to Evanston. (Tr. 1550). In the deliveries to Industrial tracks there were 985 cars on which the full Evanston charge was made. (Tr. 1550.) The services involved to these places carrying these excess charges are no greater and involve no more expense to the carrier and no greater difficulty in operation than in many other parts of the Chicago Switching District where the Lowrey rate prevails. It is almost inconceivable that any places exist where exceptional conditions would warrant higher rates than the general commodity level. If

such exceptional conditions exist, I would admit that some additional charge might be made but that is not the case in any of these instances except so far as team track deliveries are concerned and those rates are excessive as compared to the line haul rates to the nearest point North. (Tr. 1551.) As to excess charges, our company is forced to load cars which do not have cubical capacity permitting a 60,000 pound load and the charge on this minimum weight in excess of actual weight in 1926 amounted to $8,969.23; in 1925, $9,212.76 and in 1924, $9,263.83. They furnish cars that will not permit the loading of the minimum but if we refuse them we would be tied up. The carriers do not have at all times available cars permitting the minimum loading. Our coke loads average over 30 tons but with the large number of cars in 1926, 6,164 were below the 60,000 pound minimum required. These 2 classes of excess charges should be eliminated in the settlement of this switching question. Said Exhibit was offered and received in evidence, marked, "Exhibit No. 93, Witness Forrest." (Tr. 1552.)

My Exhibit 94 shows excepted rates in which the By Products Coke Co., is interested. Many of these involve movements to team tracks. And are published by inter- [fol. 975] mediate carriers and in some sense affect the combinations, except where the Lowrey rates are applied. (Tr. 1552.) This Exhibit was prepared with Galligan's Exhibit 64 before me and has not been checked with his Exhibit 85 which displaces 64. I show special rates which are omitted from his Exhibit 64, some of which are in Exhibit 85. The rate of 40¢ per gross ton on pig iron via the Pennsylvania & Indiana Harbor Belt is used for a very heavy movement from our Federal Furnace plant on both roads to Interstate Steel Company located on both roads. The properties of these two companies adjoin, their yard tracks being not far from each other. The road haul after delivery by our engines to the interchange track is a matter of 2 or 3 blocks. There is a considerable movement to other plants not quite so close. The rate applies to a minimum of 100,000 pounds. Our actual average loading is 112,000 pounds. (Tr. 1553.) An alternative rate of 50¢ per gross ton minimum of 60,000 pounds on the Pennsylvania and 67,200 pounds on the Indiana Harbor Belt is not used by us, as we always load more heavily. (Tr. 1553-1554.) Our shipments to the Interstate Steel Company in September,

1926, were 113 cars, averaging 112,000 pounds revenue, $20.00 per car. At the minimum weight, the revenue would be $17.85. It is an exceptionally short movement for a large volume of pig iron daily, with a large aggregate over the month and the 40¢ rate is the highest the traffic will bear. If this rate is raised, there will be no revenue on this movement, as we will join our tracks with the Interstate Steel property and move the pig iron within our own property lines. (Tr. 1554.) Said Exhibit offered and received in evidence, marked, "Exhibit No. 94, Witness Forrest."

$20.00 per car revenue for this movement is not unremunerative to the carriers. The total yearly movement will exceed 1,200 cars. (Tr. 1555.)

[fol. 976] The Indiana Harbor Belt publishes a special rate of $8.10 per car on manufacturing plant refuse, except clean ashes, cinders and quarry strippings, to which Mr. Hammond referred. This rate is important to us for refuse slag only, not commercial slag. When the Indiana Harbor Belt sought to increase this rate, upon complaint to the Commission, after considering cost of service, character of business, etc., it found that the old rate of $8.10 was justified. This was about 3 years ago. In that case we showed that all slag moving under the $8.10 rate we gave away. It was used for fills by railroads. It was taken to different railroads by a contractor who handled it from our plant. We standing the expenses of putting the refuse slag on the cars. (Tr. 1556.) We do ship commercial slag but not on this rate. (Tr. 1556.) We have at our plant facilities for crushing and sizing slag such as does not move on this rate; it is not refuse. (Tr. 1557.) The Pennsylvania publishes an $8.10 per car rate from junctions with connecting lines at Irondale to industries at Calburn for refuse other than ashes and cinders. We use it to move flue dust, a waste material from the Wisconsin Steel Company to our Federal Furnace plant. We actually pay $14.60 as the Chicago West Pullman & Southern adds $6.50 to the $8.10 rate. This material is of low value and a nuisance to the Wisconsin Steel Company and of low value to us, but we have facilities for handling the flue dust from our own furnace and use that from the Wisconsin Steel Furnaces as well. This movement is a short haul of rather heavy loading material and not valuable enough to stand any material increase in the cost of its transportation. Under the present 2¢ rate,

published by the Chicago Short Line, we moved to the Iriquois Blast Furnaces in September, 1926, 468 cars of coke, average 43.2 net tons, revenues thereon $8,087.00. [fol. 977] During the year 1926, we shipped 5,058 cars of coke weighing 218,160 net tons. This movement involves a short haul; less than 1 mile. In September, 1926, we moved 714 cars of coke at the present 2½¢ rate from our coke plant to our furnace plant just across the Calumet River, mostly by the Chicago Short Line and the Pennsylvania. These cars loaded 37 net tons each, the total freight was $18,209 for 1 month. (Tr. 1558-1559.) The same rates apply on the Indiana Harbor Belt. For 1926, we shipped coke to our Federal Furnace plant, 8,268 cars loading 305,916 net tons. If this rate is increased, we might not handle the movement the same as that between our furnace plant and the Interstate Steel plant but we would be forced to the limit to find a way to reduce our cost. During the war, we used a self loading barge, moving coke from the coke plant to the furnace plant which breaks up the coke and there are objections to it which are not as great however, as the increased cost. We might dig a tunnel under the Calumet River and move our coke through it. (Tr. 1559.)

These things would not develop immediately, and we would regret to have a rate made that would force us to resort to some other means of getting coke from the coke plant to the furnace plant, this being a very short haul moving usually in trains of 20 cars, requiring no classification, in spite of the statements made in the composite study. (Tr. 1559-1560.) This movement is intrastate and all excepted rates referred to by me, apply intrastate in Illinois. They are intrastate in application. (Tr. 1560.) Our movement is entirely intrastate in the application of the rate, however. The waste slag rate of $8.10 referred to by Mr. Hammond, in his case would probably apply interstate. (Tr. 1561.) The charge mentioned to the teamtracks on the St. Paul of $1.26 per net ton on coke is one of the exceptional rates found in Mr. Galligan's Exhibit No. 85, but was [fol. 978] not in Exhibit 64. We consider it excessive because greater than the line-haul rate to Evanston, and protest against its increase. (Tr. 1561.)

The Chicago & Illinois Western publish rates between industries on its line and industries on the Short Line, the Belt Railroad being intermediate, of 2½ cents per hundred

pounds on coal tar moving in tank cars. In our case it is a through rate on private cars, and under it we ship to the 29th and Albany plant of the Barrett Company in private cars, tar, with an average loading of 80,000 pounds, with no allowance either per diem or per mile. This rate is already high, and another instance where its increase will eliminate the revenue, as the tar will move in barges if the rate is increased. We would prefer to move it in tank cars, that being more convenient for us. It is the rate Mr. Furry said they desired to continue. It is shown in Galligan's Exhibit 85 as a rate to be increased, but not shown in his Exhibit 64. (Tr. 1562.) The words at the top of the sheet, "Not shown in Witness Galligan's Exhibit 69," should be Exhibit 64. This is also an intrastate movement.

The rate of 2½ cents applies between industries on the Chicago & Illinois Western and the Short Line, on light oil. The movement is much the same, being in tank cars for which the carriers make no allowance and in which they have no investment. We consider this rate too high, as in the case of coal tar. We believe the rates on all the so-called "excepted" commodities are profitable to the carriers, as the loadings are heavy, the hauls short, and there are peculiar conditions, such as the use of private tank cars, which amply justify a departure from any regular scale of rates adopted for general use within the district. (Tr. 1563.) In going over the list of Chicago Short Line rates there is no proposal to change any of these which apply on the Short Line Road itself; that is, between two [fol. 979] points on that road. That includes intraplant service which it renders at coke plants indicated on this exhibit, and to other movements on which it is not seeking rate increases. (Tr. 1565.)

Cross-examination.

By Mr. Davis:

I have not examined the individual issues of the Illinois Northern Railway to see if the rate under suspension in I. & S. Docket No. 2900 is 3 cents, which it proposes to change to 4. (Tr. 1566.)

Cross-examination.

By Mr. Gault:

In referring to short hauls I am not advocating a distance basis for switching rates in the Chicago district. Uniformity of rates throughout the district is desirable, provided they are not too high, but the higher the all-commodity rates the more exceptions would have to be made to prevent them from being higher than the traffic can bear. (Tr. 1567.)

If the chaotic condition existing prior to the Lowrey agreement existed now there would be a very strong movement to secure the unification of terminal facilities in the Chicago district that might get us out of the difficulty better than the plan suggested here. It is not to be inferred from my answer that I would rather have no Lowrey agreement. (Tr. 1568.) I said I would prefer not to have either the chaotic conditions or the increased rates proposed. I will not take either horn of your dilemma.

Chairman Campbell: He has stated his position pretty plainly, Mr. Shank, and there is no object in trying to get him to admit that he would prefer one or the other.

Mr. Walter: There is an error on page 4 of Exhibit 94, in which we show a proposed rate on coal tar between industries on the Chicago Short Line and industries on the [fol. 980] Chicago & Illinois Western. By referring to page 50 of Mr. Galligan's Exhibit 85 I note there is no change proposed in that rate. (Tr. 1569.)

The Witness: I am glad you mentioned that. (Tr. 1570.)

J. W. Brown, recalled, testified as follows:

Direct examination.

By Mr. Keene:

Have examined respondents' Exhibits 90 and 91, purporting to cover cost study in the Chicago switching district. It assigns as cost for industry switching at the Graselli Chemical Company plant $2.633 per car for the Indiana Harbor Belt and $4.93 for the Baltimore & Ohio Chicago Terminal.

The cost per engine hour of the Indiana Harbor Belt is shown as $18.96. The time required to switch 406 cars at our plant is shown as 3360 minutes, or 56 hours, which at $18.96 per hour, equals $1061.76, which divided by 406 cars gives $2.633 per car. The 406 cars moved during the test period August 4th to 10th, inclusive.

The engine-hour cost of the Baltimore & Ohio Chicago Terminal is shown as $17.9795. The time required to switch 14 cars at our plant is shown as 230 minutes, or 3 hours and 50 minutes, which at $17,9795 per hour (Tr. 1751) equals $68.92, and divided by 14 cars gives $4.9259, which moved during the study period August 4th to 10th, inclusive.

On the sulphuric acid movement via the Baltimore & Ohio Chicago Terminal in private tank cars from our plant to industries in the Chicago switching district, there is added in the cost study for industry switching $4.9259 for outbound and $4.9259 inbound, making a total of $9.8518. In addition to this charge of the Baltimore & Ohio for indus- [fol. 981] try switching there is shown in the cost study $3.65 per car for the Indiana Harbor Belt at our plant, designated as joint switching charge. Each of the 14 cars moving during the study period via the Baltimore & Ohio Chicago Terminal could have moved over the Indiana Harbor Belt, and if they had so moved our company would have been relieved of an estimated charge of $9.86 per car. (Tr. 1572.) Have prepared statement of switching rates in other cities where our company has movements of sulphuric acid. In Toledo, Ohio, the switching district rates are 38¢ per net ton, minimum 25 tons for 1 line, 45¢, minimum 25 tons for 2 line hauls. The Graselli Chemical Co., operates a plant in Toledo and ships on those switching rates. The average distance of movement on those rates are 5 miles, single line and 8.14 miles for 2 lines. At Canton, Ohio, where we have a plant, switching rates are 38¢ per net ton, minimum $9.50 per car for 1 line; 38¢ to 63¢ per net ton for 2 lines, average distance of movement 4.24 miles, 2 lines. (Tr. 1573.) In Cleveland, Ohio, where we operate a plant, switching rates are 38¢ per net ton minimum 25 tons per 1 line; 50¢ per net ton minimum 25 tons for 2 lines, average distance of movement 5.03 miles for 2 lines. At Newcastle, Pa., where we operate a plant switching district rates are 38¢ per net ton, minimum 25 tons for

1 line, 38¢ to 50¢ per net ton at same minimum and $12.50 per car respectively for 2 lines, average distance of movement 9 miles for 1 line hauls. At Lockland, Ohio, where we operate a plant within the Cincinnati Switching District, the switching rates are 40¢ per net ton for 1 line hauls and from 40¢ to 40¢ per net ton plus $8.10 per car for 2 line hauls. Average distance moved 1 line 7.06 miles and 19.87 for 2 lines. Wherever in this statement we have omitted either one or two line hauls, it is because we had none of those hauls. (Tr. 1574.)

[fol. 982] Cross-examination.

By Mr. Davis:

At these different points mentioned, we took the rates that apply on our commodity. They may not apply on all commodities. In some instances they may be different, I could not say as to that. I could not say there is no uniform basis or an all commodity basis of rates in these other cities I have named. Our tracks are not elevated in Toledo, Canton, New Castle, etc. At our plant in Graselli, Indiana, involved in this case, the Indiana Harbor Belt performs the spotting service for all the railroads and pulls out all cars for all the railroads, removing them in trains. It is the only road that gets into our plant for spotting purposes or pulling out cars.

Cross-examination.

By Mr. Connell:

Apparently the 14 cars moving via the Baltimore & Ohio Terminal during the test period were routed that way because the customer did so upon solicitation of that carrier. The 14 cars were routed that way. (Tr. 1576.) They could have been handled by the Indiana Harbor Belt if routed that way but were routed via the Baltimore & Ohio Chicago Terminal because that company, having solicited the business, requested routing via its line. We delivered these cars first to the Indiana Harbor Belt as they take all cars outbound and the Indiana Harbor Belt delivered them to the Baltimore & Ohio Chicago Terminal at our plant. We did not route the cars via Indiana Harbor Belt. (Tr. 1577.) The Indiana Harbor Belt delivered them to the

Baltimore & Ohio Chicago Terminal under routing instructions. (Tr. 1578.)

Recross examination.

By Mr. Davis:

The Graselli Company made out the bills of lading and put in the routing, Baltimore & Ohio Chicago Terminal.

Examination by Examiner Faul:

[fol. 983] Our average single line haul on sulphuric acid and muriatic acid in the Chicago District is 6.59 miles per car moving at a rate of 2¢ in private cars. Over 50% of that mileage is for carriers' convenience, (Tr. 1578) as they did not handle the movements via the shortest practical routes. They may have handled them over the cheapest route for them, which in most cases required hauling to a yard 2 miles on 1 side of our plant and back again to an industry on the other side, the actual mileage, very carefully considered would be 6.59 per car. That compares very favorably with the services accorded with our Sulphuric and Muriatic Acid in our own private tank cars in other switching districts that I have mentioned.

Recross-examination.

By Mr. Davis:

I presume all the switching rates at the other points mentioned were based upon some relation to the cost of handling the traffic but as to an actual cost study being made before the rates were established, I could not say. (Tr. 1579.)

FRANK VANDERHOOF was sworn and testified as follows:

Direct examination.

By Mr. Keene:

Have charge of yard operations at East Chicago for the Graselli Chemical Co., and have had for 11 years (Tr. 1580.) Prior thereto, was employed at railroad work in the Chicago switching district on the Indiana Harbor Belt from about 1905 to 1917. We record the time of locomo-

tives of carriers engaged in switching in the yard of the Graselli Chemical Co. The Baltimore & Ohio Chicago Terminal engine on August 4, 1927, moved one car to our plant which was shoved in by the Pennsylvania engine. On August 5, engine 935 came in at 4 P. M. with 1 empty and moved out at 4:25 P. M., with 3 loads and was in the plant 25 minutes. On August 6, the same engine came in at 4:30 P. M., light, moving out at 4:45 P. M., with 2 loads, being [fol. 984] in the plant 15 minutes. Sunday, August 7, there was no work. (Tr. 1581.) August 8, that same engine came in at 2 P. M., with 2 loads, out at 2:10 P. M., with 3 loads; 10 minutes in the plant. August 9, the same engine came in at 4 P. M., light, out at 4:15 P. M., with 1 load, 15 minutes, in plant. On August 10, same engine in at 4 P. M., light, out at 4:15 P. M., with 3 loads, 15 minutes, in plant. Total time, 1 hour 20 minutes, handling 16 cars.

Cross-examination.

By Mr. Davis:

I was yard master at the Graselli Plant in charge of shipping, etc., yard work at the times mentioned. I am not shipping clerk. (Tr. 1582.) I have charge of the shipping and as yard master am in and around the yard. We recorded the time when the engines entered our plant and when they left. The gates there are always open except at night when there is no traffic. We take this time as a matter of record. The Indiana Harbor Belt does all the spotting in our yard. The record given here covers cars routed Baltimore & Ohio Chicago Terminal into our plant and routed out over that line from our plant. (Tr. 1583.) They do not spot those cars. We keep a record of all deliveries at our plant. We keep a record of the time all engines are in it. We have kept this record since I have been over there. Our records would show the time of any engine of any company in our plant for the past 5 years, probably, with the exception of a few that they might have missed. A clerk keeps these records. (Tr. 1584.)

Redirect examination.

By Mr. Keene:

The Baltimore & Ohio Chicago Terminal, the Pennsylvania and the Wabash bring in cars via the former's line

to our plant so that the Indiana Harbor Belt can spot them. [fol. 985] Another track to our plant is used by the Indiana Harbor Belt and the Elgin, Joliet & Eastern, and it would suit us just as well if 2 came in, one over one track and one over the other, and handled all the business. I could not say whether that would suit our customers. (Tr. 1585.) I know about the routing of this traffic but I do not know who does the routing. (Tr. 1586.) The Baltimore & Ohio Chicago Terminal simply brings the cars inside the plant and leaves them there for the Indiana Harbor Belt to spot and the latter takes loaded cars out to a point where the Baltimore & Ohio Chicago Terminal comes and gets them, sometimes the Baltimore & Ohio Chicago Terminal will go in and get a car. We do our own switching regularly with our own engine which switches in the plant all day. (Tr. 1586.) The engine is owned by the Indiana Harbor Belt but classified as Graselli Chemical Company engine because it works for nobody else but our company. The time I gave as to the Baltimore & Ohio Chicago engines in our plant is the time of arrival at the yard until the time of departure. (Tr. 1587.)

A. M. Cordell was sworn and testified as follows:

Direct examination.

By Mr. Walter (Tr. 1587):

We understood from the testimony of Mr. Galligan that the railway equipment moving on its own wheels was to be excepted from the all-commodity basis, and that no increases would be proposed on it. His exhibit 85 shows there are some very nice increases proposed.

On the Belt Railway, for movements of railway equipment from industries on its line to connecting junctions, it shows present rate $11.50, proposed $13.50, which must be admitted as an error, and should be $3.15 and $3.80. [fol. 986] On page 33 of the exhibit the Baltimore & Ohio Chicago Terminal, page 35 the Chicago & Erie Railroad, page 38 the Chicago & Western Indiana, each propose an increase from $3.15 to $3.80. On page 41 the Indiana Harbor Belt propose an increase from $3.15 to $3.78. (Tr.

1588-1589.) These increases are proposed in the statement, while the statement of the witness on the stand was that no increases on new railway equipment moving on its wheels would be proposed. (Tr. 1589.)

A. L. DREHER was sworn and testified as follows:

Direct examination.

By Mr. Walter:

Am traffic manager Hyman-Michaels Company, with a plant at East Chicago, Indiana, where we have a scrap yard for handling scrap moving inbound from various points, both Indiana intrastate and interstate, for the purpose of classifying, sorting, grading and otherwise preparing it for shipment to the steel mills. Our company and other shippers handle about 1200 cars of scrap in the district, or approximately 60,000 tons per month with average loading 50 tons to the car. About 30,000 tons move in the district under the so-called excepted rate of 40 cents per gross ton, minimum 100,000 pounds. The increases would mean $100,000.00 per year on the switching business moving under the excepted rate. Under the 40-cent rate the carriers receive revenue of about $20.00 per car, but under the proposed 3-cent rate, or 67 cents per gross ton, would receive about $33.50 per car based on actual loading, or an increase of $13.50 per car. (Tr. 1590-1591.)

Our scrap comes mostly from railroads which ship what we call railroad mix, scrap which includes most everything coming off a railroad car or a railroad right of way, which [fol. 987] requires cutting and other preparation into charging-box sizes, and sorting and grading for shipment to the steel mills. Virtually we pay 80 cents per ton at the present, figuring at 40 cents in and 40 cents out. We purchase from roads, reaching such points as Aurora, Joliet, Milwaukee and other nearby points. The rate from Joliet to the entire Chicago district is 88 cents per gross ton, and where a scrap yard is located on a line not producing scrap, the switching into the yard averages about 15 cents per ton. The Joliet man would pay $1.03 per ton to get the same scrap we are competing for into the same steel mill, compared with our present cost of 80 cents, but under the

proposed increase $1.34 per ton. (Tr. 1591.) The situation as to scrap rates is peculiar, differing in many respects from general line of rates (Tr. 1591) on other commodities, and as necessity required, the excepted rates were established. Our yard was located on the Indiana Harbor Belt and the Pennsylvania primarily to be close to the steel mills so we could compete with scrap coming in from the outside. The location of this yard meant quite an investment. Scrap moves in almost any kind of equipment, and we never object to the kind of car we get. We utilize equipment that in other lines might be rejected because unfit for loading. We have no claims, and naturally, because the scrap's value is made up primarily of labor and transportation, cannot stand high transportation, and when that cost reaches to or beyond a certain point the scrap will not move. (Tr. 1592.) If these rates are increased the movement of scrap in the district will be in negligible quantities, and the time will not be distant when most, if not all, scrap yards now in the district will move to points like Joliet, Aurora, Milwaukee, etc. (Tr. 1592), and as a result the carriers will lose here in the district a vast number of cars that they now enjoy more than ample revenue upon. (Tr. 1593.)

[fol. 988] Heavy melting steel is worth about $12.00 per gross ton at the steel mills. The increased rate of $1.34 would equal about 16 per cent of its value. If the value of scrap increased by a transportation cost reaches the point that the steel mill cannot use it at a profit, it will seek other raw materials or other sources of supply. (Tr. 1593.) Most mills here are on the water, and will mean much scrap will undoubtedly move in at a very low transportation cost by water, where the switching line would receive no revenue, as most of the steel mills have their own means of handling scrap from their own docks. (Tr. 1593.)

About 70 per cent of the scrap movement would be Indiana intrastate outbound, and about 50-50 inbound. About half would be Indiana intrastate inbound and about half interstate.

Cross-examination.

By Mr. Davis:

Have been in the scrap business about 15 or 16 years at the present location. Most of the scrap we handle into our

yard comes in here from the railroads themselves. (Tr. 1594.) Very little would be brought in from the outside into a scrap yard in the Chicago district. When you speak of picking out the good from the bad I presume you mean the various classes of scrap; but there is nothing of a commercial nature in that that could be utilized again for its original purpose or for any other purpose. It is strictly for a remanufacturing or resmelting proposition. Our function is to take the various grades, such as wrought, cast, malleable, steel, etc., sort it, break it, cut it, and otherwise prepare it, etc. If we did not function I do not know what railroads would do with their under-frames, car sides, and the like, that we take and cut it at our own yards, and if the rates are increased I do not know what the railroads [fol. 989] will do. The railroads themselves can't do this work because they find it does not pay to bother with it. They get a very low price for it today. (Tr. 1595.) All of our scrap goes to the steel mills.

It would be difficult to approximate the average price we pay the railroads for this scrap. It depends upon the quantity of a particular kind happening to be in a particular car, etc., as well as the matter of 80 different grades of scrap. (Tr. 1596.) The average price of $12.00 to the steel plants represents approximately 75 per cent of the production of all scrap, and steel is the barometer of the price of scrap. Taking all the grades that are not steel, we would find probably 10 per cent that would be worthless. It is simply offal or rust, that we lose 10 per cent upon. The remaining 15 per cent might be a little cast, a little malleable, etc. It might be worth a little more than $12.00 and some of it might be worth a little less. (Tr. 1596.) So that $12.00 is the fair price on the average per ton realized on all scrap coming in. We pay more than $1.00 per ton on the average. It would be pretty hard to estimate, but I think $7.00 or $8.00 per ton for mixed scrap would be about right. We buy from the railroads on competitive bids that will allow us our labor costs at the yard, which runs very close to $3.00 per ton prepared. The $7.00 or $8.00 price is f. o. b. track. (Tr. 1597.) The railroads' records will show what they get per ton for it.

I do not claim that this is a highly competitive commodity, but did say that we located near the steel mills because

of the particular advantage the location would give to a plant or yard, and if you raise your rate to the same level or higher than the level of the rates from outside, the scrap yards will move out of the district. (Tr. 1598.)

[fol. 990] Cross-examination.

By Mr. Shank:

As to equalizing the increased freight rate by a lower price paid for the scrap, you understand we are in competition with the men in Joliet, Aurora and Milwaukee for the same scrap. If we do not pay the price for it here it will go somewhere else. All I want is rates that are reasonable, that will move the traffic and not stifle it, and rates that will enable us to continue in business. (Tr. 1599.)

H. G. Brown, recalled, testified as follows:

Direct examination.

By Mr. Walter:

Have prepared my Exhibit 95. (Said exhibit offered and received in evidence, marked "Exhibit No. 95, Witness Brown.") (Tr. 1600.) This shows our 1926 switching business by months. In the first column the number of cars switched intrastate; in the second the number interstate; in the third total switched. In the next column the percentage state, the percentage intrastate, and the total percentage. (Tr. 1600-1601.) That year we shipped 16,588 intrastate and 377 interstate, total 16,965, or 97.78 per cent intrastatg business, and interstate 2.22 per cent. The intrastate movement was wholly in Illinois. (Tr. 1601.)

Cross-examination.

By Mr. Shank:

Whether the cars moved interstate or intrastate the price received was the same, and the matter of freight rate paid did not affect the price or the price we received. (Tr. 1601.)

[fol. 991] C. A. SHANK, recalled, testified as follows:

Direct examination:

I am in favor of a genuine Lowrey agreement as originally contemplated in 1910 and 1911, but which could not be made effective because of conditions then existing which do not exist today. But with the number who are seeking exceptions to a uniform basis, if the Commission intends to except any commodities in the Chicago District, we ask for an exception on common brick. (Tr. 1603.) We had an exception from 1911, under the basis of 1½¢ per 100 on all commodities because of loading cars to marked capacity using equipment unfit for any other road haul service. Our rate, because of this, was made 1¼¢ on common brick, moving in the Chicago Switching District in lieu of the all commodity rate of 1½¢. (Tr. 1603.) Having justified in the past a differential on common brick under the all commodity rate, if we cannot now have a uniform 100% Lowrey agreement, whatever the rates may be that are fixed by the Commission, I am in favor of having none. (Tr. 1604.)

Cross-examination.

By Mr. Walter:

We have one plant in the Chicago Switching District from which we have shipped thousands of cars on switching rates in the last 2 years. We shipped 325 cars from our Chicago Heights plant to the District in the month of July. (Tr. 1604.) Chicago Heights is in the district by tariff publication and it is immaterial whether you get them in by a line drawn around the town or by tariff. As to shipments of brick originating and terminating in the Chicago Switching District, defined in the tariff, I have not made a record of those moving within the last two years. We have shipped at least a hundred in that time. (Tr. 1605.) At times we move 100 per cent of our business from our plants [fol. 992] in the Chicago Switching District to destinations therein by truck. Today, 75 per cent move by truck. During the past 2 years, that percentage has moved by truck. My competitor located in the same place can do the same thing. If the rates are increased, it is logical that he would move his commodity by truck. If the carriers do not want the

business on the 3½¢ and 4¢ basis, they will not complain if they lose it. But I am looking farther than the fact that the carriers might be better off at the 2½¢ and 3¢ rates than to get nothing on the 3¢, 3½ and 4¢, (Tr. 1606.) because I am not letting 10¢ in front of my nose obscure the dollar beyond, because the high cost of terminal switching in the Chicago Switching District has retarded establishment of low or fair road haul rates out of the Chicago Switching District. It has been used and perhaps justifiably in every rate case that has come up. With that removed, we could ask for something without having it put up in all these cases. There is no commodity moving out of Chicago that has had its business curtailed by increase in road haul freight rates to the extent suffered by common brick. (Tr. 1607.) I would say there was decidedly less cost of switching in connection with road haul than between the same points in the switching district. (Tr. 1607.) When an engine starts from 40th St., to Grand Ave., with 10 cars and picks up 10 more to distribute in between, it costs something to pick up the 10 cars. (Tr. 1608.)

Cross-examination.

By Mr. Davis:

In making the statement that I wanted 100% all commodity basis or none, I would except factory refuse without commercial value, that no one would take from our factory if given to him and which would hinder operations if it stayed there. (Tr. 1608.)

[fol. 993] Mr. Boyle: Mr. Commissioner, speaking for the Illinois Slag & Ballast Co., complainant in Docket No. 20,006, owing to the decision of the Commission, involving slag rates from Joliet to Chicago, in which it found against our contention that there should be a difference between crushed slag and crushed stone and gravel rates, we now ask for the dismissal of our complaint here without prejudice insofar as it seeks different rates on crushed slag than on stone and gravel in the Chicago Switching District and would like to stipulate as to what my witness would testify for the reason that he yesterday sprained his ankle and it would be difficult physically for him to get here from South Chicago. (Tr. 1609.) He would testify that slag loads to the physical capacity of the car

about 50 ton; that it is a low grade commodity used for ballast and as a coarse aggregate in concrete and as a rough raw material for building; and that so far as this case is concerned, the position of the Illinois Slag & Ballast Co., is identical with the position of crushed stone operators within the Chicago District, and, of course, not the same as the stone and gravel operators outside the district who favor the advance.

Chairman Campbell: Is there any objection to the dismissal?

Mr. Davis: No objection. I think Mr. Boyle intended to state that if his witness was called he would testify in substance the way Mr. Boyle has outlined it.

Mr. Boyle: Yes, that is what I intended to say, that the witness would testify as to just what I have stated. Is that agreeable?

Mr. Davis: Yes, that is agreeable.

Chairman Campbell: We will take the motion without passing on it at the present time. (Tr. 1610.)

[fol. 994] Mr. McCornack: Mr. Boyle, when the movement of commercial slag from the pile at the steel mill to the crusher at the manufacturing point where the slag is crushed takes place, is that a rail haul or not.

Mr. Boyle: From the dump pile into the crusher in most cases is performed by the crusher desiring it.

Mr. McCornack: And any rate that is now before the Commission—there would not be any rate involved in that haul, is that correct?

Mr. Boyle: Any rate before this Commission on the haul insofar as crushed slag would be concerned would be after it left the bins at the crusher.

Mr. McCornack: Is that on the record?

Chairman Campbell: Apparently so. (Tr. 1611.)

W. J. Hammond, recalled, testified as follows:

Direct examination.

By Mr. Walter (Tr. 1611):

The movement of acid under the excepted rates previously referred to by me is all Indiana intrastate. The billets all practically move Indiana intrastate, although there might be an occasional interstate movement. The slag movement is entirely Indiana intrastate.

K. E. THOLAN, duly sworn, testified as follows:

Mr. Slater: At the direction of the Illinois Commerce Commission, an examination by its accounting division has been made of the cost study presented by the carriers. (Tr. 1612.) Mr. Tholan has been in charge of that work.

Direct examination.

By Mr. Slater:

Am supervising examiner of accounts of the Illinois [fol. 995] Commerce Commission, have been with it and its predecessor for over 9 years. During this time, have had charge of examination of all kinds of utilities in Illinois in connection with rates and other matters. This includes examination of various cost studies relating to railroad traffic. Prior to my present employment was with one of the large railroad systems and engaged in preparing various statistics and cost studies. The Illinois Commerce Commission directed me to make examination of the cost studies prepared by carriers in this case and have made an examination of the records of the steam railroads which have prepared data for the composite cost study which they have introduced in the record in this case. We have at various times conferred with the carriers in committee meetings to discuss certain portions of the data. In the investigation we have collected a great quantity of detailed information from many different records of the carriers. Some of the records are in addition to those used by carriers in preparing cost study, which they have presented in the present case. The carriers have prepared and introduced as an exhibit a very intricate cost study dealing with over 26,000 cars. The shippers representative, Mr. Oliver has been given opportunity to check the working papers in support of the carriers cost study, from which investigation such as Mr. Oliver conducted, he prepared and introduced an exhibit and a great volume of comment concerning the carriers' cost study and such other matters as he deemed important. (Tr. 1614.) At the last hearing it was agreed by carriers, shippers and commissions that a joint conference would be held where all interested parties would be represented to assemble the principal facts under dispute and prepare a composite exhibit which would include

in the main the position taken by the carriers and the shippers on these items. Pursuant to the understanding, I met with carriers and shippers and have had some part [fol. 996] in the preparation of the composite exhibit which has been prepared and introduced in the record. I have prepared an exhibit No. 96 which was offered and received in evidence, Marked, "Exhibit 96, Witness Tholan." (Tr. 1615.) Some of the results of our investigation are set forth in the composite exhibit or the supplement thereto. In view of this, we did not prepare in one volume a report of all our investigation but have prepared an exhibit relating to car repairs with some reference to switching costs which items have not been covered in the composite exhibits. The carriers used the so called Coverston-Saur formula in preparing their cost study, which provides that freight car maintenance which includes repairs, depreciation, retirements and overhead accounts should be distributed on basis of number of days that a car is used in a particular service. (Tr. 1616.)

Carriers have prepared their Exhibit No. 3 showing how they arrived at the average cost per day for this class of expense which for the 9 carriers included in the exhibit averages sixty four and a fraction cents per day. They then determined for each of the 26,000 cars in the cost study the number of days each car was assigned to a particular service. Car detention cost for each car has then been determined by multiplying the number of days by the average cost per day. In examining data supporting carriers cost study, we investigated carriers methods of determining number of days of car detention chargeable to a particular shipment. The study includes upwards of 26,000 cars which means 52,000 terminals, (Tr. 1616.) and in the limited time, it was physically impossible to check all these. We checked over 1,000 cars for both beginning and ending detention and nearly 200 for either beginning or ending detention, approximating 2,200 terminals. In collecting necessary data we have referred to car records, [fol. 997] station records, wheel reports, train sheets, demurrage reports, interchange reports, switch lists, and other records. Part of this data was furnished by some of the carriers in compliance with our request. In selecting cars to be checked, it became apparent that there would be considerable demurrage on many of them and that the

detention was probably in error in certain cases. Many were found to have a long detention and it seemed important to check some of these. The statements included in this report indicate a great number of errors made by the carriers both as to principle and facts. They also show that demurrage revenue is a matter of importance in view of the fact that that expense is included in the cost study. The average detention of cars included in this exhibit is greater than for the 26,000 in the cost study. These pages numbered with Roman numerals, 3, 4 and 5, state in general the position we have taken in regard to a part of the time that is charged individual cars and in general explains the reason we have made some deductions. Statement No. 1 following the pages numbered with Roman numerals, summaries the terminal detention of cars we checked. The first 4 columns cover cars checked both for beginning and ending detention separated between 1, 2 and 3 line hauls. The 4th column shows total of cars checked. The last 4 columns cover cars checked at only one end of the trip. That is for either beginning or ending detention. We checked these 189 cars at only one end of trip because some either originated or terminated on the Elgin, Joliet & Eastern Railroad which in setting up its car detention cost used a method somewhat different than used by the other railroads. There were 2 or 3 line haul cars which had been checked on the other railroads. (Tr. 1619.)

[fol. 998] Referring to the first four columns, the first line shows 276 cars one-line, 645 two line, and 97 in three-line hauls, making a total of 1018. We have changed the detention on 816 cars, 233 being single-line, 516 two-line, and 77 three line hauls (Tr. 1619), leaving unchanged 202 cars. The fourth line shows cost study terminal detention as included in carriers' exhibit for these 1018 cars as 297,240 hours, subdived according to one-, two- and three-line hauls. We have corrected that to a total of 218,090 hours, a reduction of 79,150. This reduction has been distributed in the following lines, according to principal reasons for making correction: The first item listed in idle time for which we have deducted 37,022 hours, representing time for car prior to placement for loading or future release by consignee, which did not appear to have any direct connection with the movement of the particular load, but which had been included in carriers' cost study.

The second item pertains to unusual delay on loaded cars, for which we have deducted 3,582 hours.

The third represents excess time on reconsigned or reshipped cars, for which we deducted 1286 hours, This time pertains to movements prior to the reconsigned movement which is included in the cost study.

The fourth item pertains to time of private-line cars while they were off the lines of the carrier, and for which we deducted 8623 hours. (Tr. 1620.)

The fifth item represents time involved in the return of empty foreign cars from base yard to interchange point after completed loaded movement, for which we deducted 6722 hours, believing that a considerable amount of such time should be properly charged to some other loaded movement.

The sixth item represents time of cars on repair tracks, [fol. 999] for which we deducted 1523 hours.

The seventh item represents miscellaneous adjustments, such as clerical errors, for which we have deducted 20,392 hours, making the total of all time deductions 79,150 hours. The distribution of these figures according to one-, two- and three-line hauls is shown.

Statement 2. In making these deductions shown here we determined them by checking each individual car involved where a deduction has been shown on sheet No. 1. (Tr. 1621.) Statement 2 summarizes net excess terminal detention on cars checked both for beginning and ending detention, indicating the railroad on which the correction was made; the statement setting up one-, two- and three-line hauls and the total.

The first line shows the Belt Railway, on which we checked 20 cars moving single line, the cost study detention showing 5093 hours, which we corrected to 4098, making deduction of 995 hours. In two-line hauls we checked 179 cars on the Belt and made a deduction of 5,476 hours on these cars. This is followed through for three-line hauls with the totals, the same method being followed. We arrived at these deductions by making an actual check of every car at both the point of beginning and the point of ending of the movement. (Tr. 1622-1623.)

The 179 cars referred to in two-line hauls were checked on some other railroad and will be duplicated in the column headed "Number of Cars." The amount of time deducted

on other railroads for these cars will also appear in the list of Excess Detention, opposite Other Carriers. The carriers did not separate total detention on two- and three-line hauls to show number of hours that each car spent on each railroad, which would have required determination of the correct interchange time on each car. A determination of this interchange time did not seem to warrant the amount of work that would have been required, and so these col- [fol. 1000] umns have been left blank in the statement.

We did not check three-line hauls on the Belt. The totals show 199 cars checked on the Belt, and that the excess detention which we have deducted for that railroad amounted to 6471 hours. (Tr. 1623-1624.)

The same explanation might be made for any one of the railroads on this page. I have simply followed the first line to illustrate the statement. In making this check we went back to the original records of the railroad to determine, for instance, from car records when a car moved in a certain movement, and also from the demurrage records we determined when a car was placed at an industry for loading or unloading, and when released by the industry from demurrage, showing when it moved in and when out, according to car records, trainsheets or other data that we could find that would show the movement of the cars. (Tr. 1624.)

Statement 3 summarizes net excess terminal detention on cars checked either for beginning or ending detention, indicating the road on which corrections were made. (Tr. 1624.) This is the same as Statement 2 except it covers the 189 cars checked at only one end of the trip. We show, however, in the second and third subcolumns of each of the main groupings, the cost study detention and the correct detention. These figures include time of the cars on all railroads over which they moved and are not confined to time spent on railroads opposite which they appear. Such figures were omitted from statement No. 2, but since the cars on statement No. 3 were checked only at one end of the trip no duplication occurs by the insertion of these figures.

There is a slight typographical error in the heading of [fol. 1001] the first column. The word should be originating instead of origination. (Tr. 1625.)

Statement 4 classifies the net excess detention in hours by carriers, dealing with 1018 cars checked completely. The

total excess detention amounting to 79,150 hours agrees with the summary on page 1.

Statement No. 5 is similar to No. 4 except it deals with the 189 cars checked at only one terminal.

Statement 6 compares number of cars checked with number of cars on which terminal detention was corrected, and deals with 1018 cars checked both for beginning and ending detention. (Tr. 1625.) The totals at bottom of the page agree with summary shown on page 1, this statement being a distribution of these cars by the carriers on which the cars originated.

Statement No. 7 is similar to No. 6, except it deals with the 189 cars checked at only one terminal.

Statement No. 8 covers 1018 cars checked for beginning and ending detention, showing distribution according to number of days' detention per car, as shown in the cost study and as corrected, being divided into one-, two- and three-line hauls, with the totals.

Referring to the total columns, we find that none of these cars were included by carriers as having a detention of one day or a fraction thereof, but we have placed 9 cars in that group. Of the 1018 cars the carriers had 7 in the two-day group, while we placed 20 in that group. In the three-day group the carriers placed 11 cars, while we placed 36 in that group, and so on. The last item in the list shows of these 1018 cars the carriers had 21 with a per-car detention over 30 days, while we left only 4 in that group, although we left some cars in these higher groups, thereby allowing car detention for such a long time per car. We have given consideration to demurrage that has been col- [fol. 1002] lected on these cars. (Tr. 1626.)

Statement 9 is similar to No. 8, except it deals with the 189 cars checked at only one terminal.

Statement No. 10 shows demurrage recorded on the cars checked, divided among single, two- and three-line hauls, and totals, showing the information by railroads. The statement shows for one-line hauls on the Belt, we checked 20 single-line cars, on which we found 23 debits and 11 credits, with no excess collected under the average agreement and also $37.00 demurrage on the straight plan. Two hundred twenty-seven two-line cars were checked on the Belt, where we found 157 debits and 88 credits, and $205.00 excess collected on the average agreement and $12.00 on the

straight plan. There were no three-line cars checked on the Belt, the total of that line being 247 cars, 180 debits and 99 credits, $205.00 excess and $49.00 collected on the straight plan. The grand total on this exhibit shows 1314 debits compared with 891 credits, and excess of $1655.00 on the average agreement plan and $440.00 collected on the straight plan. (Tr. 1627.)

The carriers included the entire cost of the detention of cars referred to in sheet No. 10 as part of the exhibit in switching service in their exhibits. As to the cars we checked, they included time from the so-called assignment of the car to the particular service until released after having been unloaded at the industry of the consignee, which included for whatever time they collected demurrage. (Tr. 1628.) No credit was given anywhere for the time these cars were in service during which the carriers were collecting demurrage or assessing demurrage for such service. Pages 11 to 14 inclusive show illustrations of the corrections we have made in car detention.

The first car on page 11, Pennsylvania No. 13079, moved [fol. 1003] in one-line haul from American Maize Corporation at Robey to the same company at Morgan Street team track, the carrier's detention beginning on September 17th and ending October 1st. We have changed the beginning detention to September 24th at noon. (Tr. 1628.) The explanation is that the car was received from Indiana Harbor Belt on September 17th. The carrier began detention on the date of interchange. The corrected detention starts with movement of empty on September 24th from Colehour yard to the industry. The idle time prior to the 24th was excluded. We made no change in the ending time. The correction we have made results in a decrease of 162 hours, making corrected detention 167 hours instead of carrier's detention of 329. On this car demurrage record showed 1 credit for the consignor and $2.00 collected from the consignee. This was Pennsylvania car being returned empty by the Indiana Harbor Belt on September 17th. It went to the Colehour yard and moved from there on the 24th for use in a one-line shipment which is included in the cost study. This was a car owned by the Pennsylvania, performing the service, and the detention should not have started on the movement until the car was really assigned to this service, which as a general rule should be when the

car moves empty from the yard to the industry. (Tr. 1629-1630.)

The next car on that page is New York Central 255453, moving in a two-line haul originating at Irondale elevator of the Chicago & North Western, destined to American Maize Company on the Indiana Harbor Belt. The North Western began detention of the car on September 8th, which we corrected to September 14th at 10 A. M., for the reason that the carrier began detention at the time the empty car was placed on interchange track by the Indiana Harbor Belt, which was not actually pulled into yard for loading until September 14th. Corrected detention begins [fol. 1004] at placement for loading on that date at 10 o'clock. Closing detention on the Indiana Harbor Belt was not checked. The demurrage record for consignor shows 1 credit.

The next car is Pennsylvania No. 334185, moving in a two-line haul from Hubbard Steel Foundry Company on the Pennsylvania to Wisconsin Steel Company on the Chicago & North Western. The Pennsylvania started detention on September 2d at 6 P. M., which we changed to September 14th at 9 A. M. This car was made empty by an industry in the East Chicago district and moved to yard on September 2d. The carrier began detention on September 2d. (Tr. 1630.) But the empty car moved to consignor from East Chicago yard on the 14th, and corrected detention begins with movement from the yard to the industry. (Tr. 1630-1631.) The North Western ended detention of this car September 22d at 11 P. M., which we changed to September 21st at 12 o'clock noon. The loaded car was received at the industry on September 18th, placed under demurrage on the 20th, released on the 21st, reloaded on that day, and moved from Deering to 40th Street on the 21st. Corrected detention ends at estimated time that unloading of inbound car was completed. Demurrage record shows consignor 1 credit and consignee 1 credit.

The next car is Chicago, Indianapolis & Louisville, moving two-line haul from Brownell Improvement Company on the Baltimore & Ohio Chicago Terminal, to Rockwell Lime Company on the Belt Railway. The Baltimore & Ohio Chicago Terminal began detention September 5th at 5 P. M., which we changed to September 9th at 6 A. M. The carrier began detention date empty car was received from

the Rock Island at Burr Oak, which moved from Burr Oak to Blue Island on the 6th and from Blue Island to the industry on the 7th, being placed under demurrage on the 10th. Corrected detention begins on the 9th (Tr. 1631), one [fol. 1005] day prior to placement under demurrage.

In the preliminary part of my statement I make certain comments pertaining to this kind of movement where detention started at base yard at time of general movement or supply of cars towards industry without definite assignment, cars being placed upon some sidetrack or industry track several days in advance of actual spotting for load and placement under demurrage.

As to the Brownell Improvement Company, we found that the Baltimore & Ohio Chicago Terminal moves a string of cars into that industry, or somewhere in the neighborhood, which are moved there for prospective loading, as near as the records show. The cars are not placed under demurrage until some time later, which is the reason we have changed the time on this car. Closing detention as signed by the Belt was the 15th at 11 A. M., which we changed to the 14th at 9 P. M. Carrier fixed closing detention at interchange of empty car to the Chicago & Illinois Western at Hawthorne. Corrected detention ends at arrival at 22d Street yard. Demurrage record shows consignor 1 credit and consignee 1 credit. (Tr. 1632.)

The particular cars we have shown were simply picked so that they would illustrate the various methods which we applied in making corrections. There was not any uniform attempt that I know of on the part of the railroads to include in the exhibit they prepared, showing cost of car detention, the entire time the car was in the yard idle, as a part of the switching service or cost, even though the car may have reached Chicago in road haul service and thereafter made empty and placed in the yard. (Tr. 1633.) We have found in many instances that time has been included on cars which we thought was prior to the actual assignment of the car to a particular movement. In some in [fol. 1006] stances the cars arrived from road haul movement. In some the cars owned by a particular originating railroad were being returned by some other carrier from some other kind of movement. We did not investigate to find out just what that previous movement was, but we did trace these cars back to a certain extent so we knew some

thing about the previous movement. We found cars coming in from some kind of movement where carriers included the time from and after interchange time. The first car in the list was just an illustration, where the car was being returned home and its time was started immediately upon the interchange.

Examiner Faul: I think the exhibit will speak for itself, unless the witness has some special comment to make. (Tr. 1634.)

The Witness: I have no other special comment.

Examination by Examiner Faul:

We did not have time to go over or attempt to reconcile all of our differences with the carriers. We did take time on one of the roads to sit down and go over each individual car with that road, which was the Chicago & North Western Railway. When we finished the details with that road we felt that the changes we had made and we made some, based on our conference were rather minor in their nature, and we did not feel that we were warranted to take the time to go over all the rest of them; but we did go over all of the details with the North Western. The checking with the North Western grew out of the joint conferences we had. Of course various of these meetings dealt with individual carriers. (Tr. 1635.)

Direct examination.

By Mr. Slater (continued):

Statement 15 shows entire freight operating revenues, [fol. 1007] freight train car repairs, freight train car depreciation, freight train car retirements, total freight operating expenses, and the operating expenses and the operating ratio for carriers included in the cost study, together with Baltimore & Ohio and the New York Central, which were included in one of the carriers' exhibits for the year ended December 31, 1926. These figures have been summarized from the annual reports on file with the Illinois Commerce Commission and are included for convenient reference. (Tr. 1636.) This report in the main covers car detention. We have inserted on one page, comments concerning routing of cars which have to do with the company's so-called indexes. It is the page numbered

Roman VI. In the conference, we discussed various items concerning the routing in the preparation of the element cost. We have not summarized the results of the checks that we made of the movements of the 1,000 cars because time was not sufficient to complete this undertaking in a satisfactory manner; (Tr. 1636.) and on a considerable part of these 1,000 cars we do not have the complete information.

Mr. Davis: Mr. Examiner, I would like the privilege of cross examining Mr. Tholan tomorrow morning.

Mr. Slater: Mr. Tholan will be here in the morning if the case is not concluded today. (Tr. 1637.)

E. F. Saur recalled in behalf of respondents.

Direct examination.

By Mr. Davis:

In the various joint conferences we have held, there has appeared to me that there was a misapprehension as to what was involved in the term "car record". Each railroad in its terminal operation makes such record as it feels to be necessary to meet its own requirements. Most railroads maintain within terminal limits, a car record, a book or series of books in which is recorded (Tr. 1638), the [fol. 1008] date, the initial and number of every car, going into various degrees of refinement; the simplest record being that of cars in and out of terminals in road trains and to and from connections. The most refined car record maintained is one that not only includes that information but which records details if internal movement within the terminal limits either to or from different stations or yards. These book records must be made from underlying statements, either what has been referred to as a train sheet, sometimes called a wheel report or switch list; some roads maintain what they call conductors switching list and every road must maintain a record of cars interchanged with other railroads. Other records are necessary in connection with demurrage. All of these may properly be called car records, but confusion arises unless a particular kind of car record is specified in any designation. (Tr. 1639.)

The formula itself provides in assigning elements of service to specific cars the count would begin at time of the assignment of the car to the particular service and shall end fundamentally when the car is released from service. With 15 different railroads involved in the cost study, each maintaining car records of various degrees of completeness, it was very difficult to try to lay down any hard and fast rules. (Tr. 1639-1640.) And in proportion to that difficulty effort was increased to make perfectly clear the fundamental principles involved. All instructions tended to setting up records in such shape that when later the elements of service were applied to specific cars that the proper elements could be assigned no more and no less. Even with the most complete car records there are a number of service units not correctly recorded so that a cost study dealing with various unit costs of service could not be developed without a special study. For that purpose a blank form was designed which was recorded by every [fol. 1009] conductor on every engine trick during the cost study period, showing exactly how he disposed of his time, and the number of cars handled with respect to the various elements and sub-elements of service. It was necessary in the study to develop whether or not a car was reloaded after having been made empty at an industry or whether it was furnished from a base yard or from a connecting yard. (Tr. 1640.) It was necessary to obtain information as to whether the car when released from the industry was reloaded or taken to a base yard and returned to a connecting line or a classification yard. The cost study committee was composed of men experienced in the accounting departments and the operating departments. Where a member of the committee was an operating man insofar as necessary he used his own personal knowledge of the regular or normal routing of cars. Where the cost study committee member was an accounting man, in varying degrees he obtained such records as he could from the car records but even with those car records, it was necessary for him to depend on the knowledge of an operating man in order to have a complete record of units of service involved in the different movements. (Tr. 1641.) The operation of a freight yard cannot be compared with the operation of a

passenger train schedule. There must be flexibility of operation in the handling of cars in terminals, due to varying volumes of traffic, offered for handling. Regular assignments are provided as far as is practical and wherever the knowledge of an operating man was necessary in setting up these indexes (Tr. 1641.) the effort was directed always toward the normal movement furnished in the handling of cars, in this service. (Tr. 1642.) It is the function of a yard master to regulate the number of engines employed either by increasing or decreasing, to permit proper and prompt handling of the traffic; so that any yard master in his district, or any train master, must know [fol. 1010] the normal or natural movement given to any car. (Tr. 1642.) We found in checking some Pennsylvania records—the special forms that were made by conductors—that on 5 days out of 6 a movement was made in a certain way, but on the 6th, made in a different way. But generally speaking, the fundamental principle involved whether the cost study committee member was from the accounting department or the operating department. The fundamental principle applied was that of assigning each index number the proper units of service. (Tr. 1642.)

A base yard, Mr. Slater, must be a classification yard but all classification yards are not necessarily base yards. A base yard is generally one of sufficient size so that certain assignment of engine crews make that their basis of operations. It is really a general yard in which they perform all kinds of service, classification, storage, etc.; of service. They are sometimes referred to as key yards. They are the home base for a various number of engine tricks and are equipped with repair yards and storage yards for all purposes. Wherever the classification yard may apply to a small one where only classification service is performed, which is frequently referred to as an auxiliary yard. (Tr. 1643.)

Ray Hurd was sworn and testified as follows:

Direct examination.

By Mr. Davis:

Am chief clerk to general superintendent of the Belt Railway of Chicago. (Tr. 1644). Have been in attendance

at the hearings in this case and was one of the cost study committee of the carriers of which Mr. Saur was our chairman. For the Belt Railway in preparing the cost study, I made the assignments of the elements of service those [fol. 1011] cars should have on the Belt Railway and those assignments for the period involved in the cost study were correct. Since May 15 I have made a subsequent study. (Tr. 1645.) After the hearing last May, we took our records and made an actual check of the movement of the cars over our line and compared it with our setup, showing our original set up was 94% correct, which shows that 278 cars out of the 4890, moved differently from the way we had set them up. In making the change resulting from that check, it resulted in our cost study overstating the costs thirty eight dollars and some cents. The total amount of money involved on the Belt being $27,000.00. The overstatement was $38.15. (Tr. 1646.)

We took the number of cars and went to the various stations and ran the cars from our own records and brought them back to the office comparing them with the way they were set up in the cost study and where there was an undercharge, it was listed as well as any over charge. (Tr. 1647.)

Cross-examination.

By Mr. Tholan:

In this rechecking of the cars in the cost study so far as the Belt was concerned, we checked both the 1, 2, and 3 line hauls and the total over statement was the net for all 3. I am not sure that I have the figures separately for 1 line, 2 line and 3 line hauls. The cost study of cars on the Belt for the test period as shown, showed a percentage of error of 6.09 per cent (Tr. 1649) and if all movements in the exhibit are corrected to that extent, it makes the slight difference in money that I stated. Taking a movement from the Illinois Steel Co., via Chicago, Milwaukee & St. Paul to Athey Co., at Clearing, the check in that instance would be from the checkout record from South Chicago. I do not think we have a record showing that car classi [fol. 1012] fied at 22nd St., and our check was not complete as to all the movements in the cost study. The outcards show the classification of that car on the Eastbound [ump

at Clearing. The out-cards you could find in the Superintendent's office at Clearing, which show that car going over the hump. (Tr. 1650.) The conductors report shows the transfer of that car from the West yard to the low line. That record is available at the agent's office. I will bring the record of that car, Chicago, Milwaukee & St. Paul No. 305,276, index 586, here tomorrow. There is probably no absolute record from which you could check the classification of that car at the West yard flat. (Tr. 1651.) Index No. 425-A covering car moving from the Chicago By-Products Coke Corporation to the Austin Coal & Coke Co., classification at 22nd St., the records at 22nd St., would show that. The records would show the train was switched. The records there might show the train coming into the yard on such and such a track and then the yard engine goes and switches the car on that track for the various destinations. The record shows that this particular car arrived on a particular track, was classified and left. I will try to bring the records here tomorrow showing the movement of this car (Tr. 1652), but those will be back in 1926, I may have some trouble in getting them, but will do what I can. The classification at Hawthorne was shown from the same sort of record. There cannot be a record showing the car was actually classified with this exception. A car arrives at Hawthorne on track No. 8 for a certain destination. The train arriving on that track will have cars for half a dozen or a dozen different destinations; (Tr. 1653.) A yard en- [fol. 1013] gine goes in there and breaks up that train and of necessity he has to switch the cars. (Tr. 1653.) In a case like that I concluded that all these classifications were made rather than checking them from an actual record. We would not have a record showing each one of the small movements from one track to another one in the yard. As to the reclassification of the car at the same point, the cars leaving Hawthorne for the industries will arrive on track 8 and the yard engine comes in switches the cars for the Burlington on 1 track, for the Chicago & Alton on another and for the Soo line on another and the cars for Hawthorne industries on another. I am trying to tell you how I would know what happened but we do not have a record that would show the actual classification of a car from an inbound transfer train to a certain track in the yard; there is no such record. As to the classification at Cragin, my

answer would be the same that we have no actual record from which could be determined that the car was classified, not as to the actual track or by what train, and as to reclassification at the same station, it would go through the same process. You would not have a record of the individual cars in the train as they are broken up from that train to the various tracks in the yard, except your checkout record. There is no record from which you could check these other items, particularly classification of the car or from which you could determine that each of these cars were reclassified the number of times indicated in the cost study except that the record will show the car arriving in a train in a yard on one track will leave in a train from that yard on another track. (Tr. 1655.) There were some unusual costs on our railroad that we did not use because they would not represent a normal movement. Very often perhaps, every day, we make movements for operating reasons for the convenience of the shipper or other similar [fol. 1014] reasons that will be out of line but normally 90 per cent of the business will move in certain or regulated channels. As to unusual movements I have in mind one or two during the study period between South Chicago and Lemoyne and South Chicago and Hawthorne, handling individual cars. That is not a normal movement and we have no place at Hawthorne (Tr. 1656.) to take care of a train except on a main line which means the train has to stop South of Hawthorne, set the car out on the canal track then couple on the train and go ahead. Afterwards the yard engine is sent out of Hawthorne to the Canal track to get the car which will result in the cost of anywhere from $8.00 to $16.00 or $17.00 per car. We go from the level to elevated tracks at Hawthorne and if the train is stopped there, they cannot make the grade. We did not use a number of short runs over various portions of our lines to build up a through movement over the territory. The reason is that the normal movement of the bulk of the traffic would be in a direct train. Some trains out of South Chicago will leave there with cars for 22nd St., and Cragin and sometimes will get cars for the Northwestern (Tr. 1657.) or the Milwaukee. Then you would have a transfer to 22nd St., 22nd St., to Cragin, but the bulk of the traffic will move direct from South Chicago to Cragin. So it

is proper to use the normal movement which would be less than the combination. (Tr. 1658.) That is the only reason for using the through movement. The transfer elements from station to station included the time of starting the train and time of coming to the first stop and setting off some cars. (Tr. 1658.) In the using of the combination movement you would be charging the through car with the transfer move belonging to a local car and that is one reason why we would not use the combination of local movements. (Tr. 1658-1659.) Where we had 10 or 15 cars [fol. 1015] moving between the same two industries, I did not look at each individual car to see where to check the start of the movement and the detention on each car. I checked merely the physical movement of the car. In the check where I found about 6 per cent. error, was a check of the physical movement of the car only. There was no car detention in it. If there were 15 cars moving between the same two industries our car accountant checked the cars from his records for car detention; and the agent's records and the demurrage records. Each individual car was checked on form C. S.-6-A. We started the time from the time of the assignment. (Tr. 1659.) We were instructed to start car detention at the time the car was assigned to that particular loading and it may be, of course, that we made some errors; we probably did. But am certain that was the practice followed; We did not figure from the time the car was actually placed, but from the time assigned. That is, from the time the car order clerk instructed the operating force to pick up a car for this industry for certain loading. Well that car was taken out of the regular channel and diverted to that industry. (Tr. 1660.) In accounting for the number of cars on the Belt Railway upon which detention time was figured from the time the car was empty or received at the interchange yard as stated by Mr. Tholan, the time as I mentioned a moment ago, we included in our detention time beginning with the time of assignment until the car was returned to its normal flow of traffic.

Cross-examination.

By Mr. Walter:

In my check I did nothing more than determine that the car moved through the yard as originally charged; that

is all; the physical movement of the car through the yard. And then finding the car in the various yards on the road I assumed that it had certain classifications in handling in [fol. 1016] those yards for which I made the charge as stated in my exhibit. There is nothing in any record now existing to show anything more than its presence in the yard; we can only show that a train of cars will arrive in a certain yard on a certain track and a few hours later those cars will leave that yard from another track (Tr. 1661), so that somewhere in that process the cars had to be switched from here to there, from one place to the other and we treat each car as a unit regardless of the number that might be going to and from the same industry.

Recross-examination.

By Mr. Slater:

As to a car arriving at an industry under load and reloaded, the cost would start with the car at the industry. In other words there would be a reload and no cost in our elements of getting the car to the industry. (Tr. 1662.)

G. F. Vivian, recalled, testified as follows:

Cross-examination.

By Mr. Walter:

In my exhibit 7-A showing rates under the Lowrey basis and over the Lowrey basis, cinders are found in commodity group 69. (Tr. 1663.) Scrap iron and coal tar are in group 69; ammoniacal liquor, group 66; slag, group 69, and refuse and ashes, I presume would be under the same group number. Railway cars on their own wheels are not in this statement. I determined between state and interstate by the usual methods used by carriers in preparing intra state and interstate statistics, and in that you follow the actual route of movement. (Tr. 1664.) If a yard is located on the State line, whether the movement in the yard would be state or interstate depends on where the car came from and will go to. If it went out of one end of

the yard into the other state and then went back into the [fol. 1017] state of origin, then it be an interstate movement and that would be determined from the route the car followed. We have records available that would enable you to determine whether a car went in at one end of a yard and out at the other or whether out at the end at which it came in. (Tr. 1665.) All the data that comprises the underlying basis for these exhibits are marked in accordance with that method. Benzol and Toluol are in group 66. (Tr. 1665-1666.) In Exhibit 7-A where we show the rates below and above the Lowrey basis, we have data showing origin and destination and routes of the particular movements. In fact, we have 14,000 pages underlying this set of exhibits and we have in the neighborhood of 42,000 individual slips covering each particular car and its movement. On sheet one of Exhibit 7-A where we show one car of flour and meal with the present and proposed rates and 24 cars of other milled products, our working papers segregate these movements under particular rates and as to any tariff item you desire to investigate our records would show all cars moving under a particular rate and before it was finally merged into the completed exhibit. (Tr. 1666.)

E. F. Rummell, recalled, testified as follows:

Cross-examination.

By Mr. Walter:

In my previous testimony dealing with the repairs to cars, I used the word 'damage' as indicating cars damaged in movements and as meaning that the car or a part of it, some part of it, was broken. It would include possibly some worn parts that could not be detected by the usual inspection. (Tr. 1667.) My testimony was to the effect of the car being damaged in the yard or on the road, and that more damage was done in the terminals than on the road. My testimony was directed to broken parts of a car in the [fol. 1018] usual handling in the yard or on the road and had no reference to the general work which is necessary to put a car in shape; no general repair work. (Tr. 1668.) The facilities for general repairs exist at these terminals

to a much greater degree than they do on the road, and when cars damaged through rough handling, collision, etc., are repaired, we then repair whatever is needed on the car and put it in shape. I only testified to the number of cars that were damaged on the road and in the yard. (Tr. 1669.) I did not testify that 1026 cars were repaired in the Southern district in 1928, and that the total expended on those cars for labor and material was $35.50 per car. (Tr. 1670.) I gave the total number of cars that were damaged for six months in 1928, being 1026 in the yard and on the division there were 126. (Tr. 1671.) The car would not go on the rip track unless it required repairs, but once there all damage that might have occurred on the road or in the yard was included in the $35.50; all that was done to it was included. (Tr. 1672.) We show 1026 in number damaged in the Chicago Terminal in that period; they were damaged in the terminal as shown by the inspection reports. The inspection reports do not show in all cases that they were merely found in a damaged condition. (Tr. 1672.) We know they were damaged in the terminal because we have the record to show where they were damaged. Sometimes the record shows more than that they were found in a damaged condition. That is not necessarily a very unusual situation. Cars are usually inspected as soon as the train arrives, and inspected before they leave the track of the terminal. They are inspected coming into the terminal and record made of the damaged condition or need of repairs, and before they go out they are examined and if any are found to be in a damaged condition or need of repairs they are repaired before they [fol. 1019] leave the terminal. (Tr. 1673-1674.) In addition to these two inspections we have had, at certain yards, inspection after the car is placed at the freight house. It all depends on where the yard forces are located. We have such inspection in Chicago at the Galewood freight house and at Union Street. I do not know of other places, offhand. We have about 10 yards in Chicago where trains either arrive at or depart from, and that inspection is put down in the report. (Tr. 1674.)

If the report shows the car is safe to run—that is, that there is no penalty defect, it is repaired at the next repair track. (Tr. 1675.) If it is not safe to run the car is set out of the train and put on the repair track. If it

is a safety defect it is not permitted to go out of the terminal. But if it is not such a defect, a broken board say, there are times when they are repaired right on the track, if there is time enough to do it, and if he cannot, it goes out and is repaired at the next repair track. (Tr. 1675.) If it is just a broken board and it is not going to damage the commodity in the car or interfere with its operation, it is liable to go to the end of the division or three or four divisions. (Tr. 1676). That is not true of any similar defect that does not impair the use of the car for the particular lading or endanger the safety of the men operating the train. We do not allow our cars to run around promiscuously that way on the railroad. Our rule is to see that the cars are repaired, and in the testimony I gave, a car loaded will be a car in perfect condition or it would not load. We make an effort to have cars fit for grain loading. (Tr. 1676.)

The damage occurs in all services. More cars are damaged in classification service than in transfer service. Most of the smaller damages occur in classification. As to the [fol. 1020] heavier damages, the place where they occur depends on how the damage happens. I would say in the classification yards, on the leads, is practically where the damages occur. The damages aside from ordinary wear and tear occur in the classification yards on the leads, and in transfers. (Tr. 1677.) The transfer service in some of the yards is more likely to cause damage than the road haul movement from division to division. (Tr. 1677 1678.) Speaking generally, it is, because we are handling big trains and probably a string of cars without air coupled in, and the rough handling and stopping is what accounts for that. We can handle in the yards without the air being coupled up, and we have yards that are a mile long. Transfer movements from yard to yard is all yard movement within the terminal. I did not say that between our yards here in Chicago we can move from one to another without coupling up the air. (Tr. 1678.)

Transfer service is service from one yard to another, and whether we couple up the air depends upon where we are going or where we came from. Take our Bensenville yard, from the east end to the west end about a mile or two long, as an instance where the law does not require us to couple up the air. When we move from our outer yard to our downtown yard, the air is coupled up, and that

is practically the same sort of a movement as a road-haul movement, and the resulting damage to the cars in that movement is practically the same as in a road-haul movement. (Tr. 1679.) There is a vast difference between spotting and pulling the cars at an industry here and at an industry out on the road. We have to perform the service here much faster than out on the road; we handle more cars with a switch engine in the yard than out on the road, and the cars receive more handling from an industry track than they would receive on the road. In [fol. 1021] handling two cars to an industry on the road the train pulls up with a train crew, trained in the same manner as our yard switching crew (Tr. 1680-1681), and I think the road crews are as proficient and as efficient and that the equipment they use is just as efficient in the road-haul service as it is in the switching service. Working in the yards in switching cars and working on the road switching cars are two vastly different things. Usually on the road they handle a few cars with the engine shoving in and pulling out; probably they shove in with the air coupled. In the yard the switching is entirely different. You probably have 30 or 35 cars in one cut, and you will shunt back and forth switching to the different tracks. I am not talking about classification. (Tr. 1681.) You do not always break up a train to set out two cars to an industry. The train may be in station order, and we make it a practice to do that. Where we put two cars on an industry track the air is usually coupled up if they are switched out of the train and we have to switch the cars out to put them on an industry track, and whether we pull the two cars off the head end of or at the rear of the train depends on what the situation is. If you mention some concrete situation I probably can explain it to you better. (Tr. 1682.)

Taking train movement from Chicago to Milwaukee with cars to set out at the first station, if the cars are between the rear and head ends air will be coupled up; if they are going to shove them on the sidetrack the air is coupled up, then he brakes his air, away he goes, and the air is set. If he goes in with the engine on the sidetrack to pick up the cars, the air is not coupled; that is, sometimes they will couple up the air and other times they will not. Generally speaking, in switching in the yards and placing cars

[fol. 1022] on the industry track the air is not coupled. In shoving 2 cars to an industry track in the district, whether air would be coupled or uncoupled depends on the situation, whether or not there are other cars on the track. If there are no other cars on the track, all you have to do is to cut off the cars from the train and shove them onto the industry track, spot them and perhaps make the door where the shipper wants the car spotted, the first time, and maybe not. You move them back and forth. (Tr. 1683.) A man handling with air is in a better position to spot the car than a man without the air coupled in.

Mr. Walter: All right, but he does it sometimes with the air on and sometimes with the air off, both places, does he not?

The Witness: No, not in an industry—that is, not in the terminal, it is not the general practice.

We do not have a hump in our yards. I am not prepared to say whether there is more likelihood of damage in a flat yard than in a hump yard (Tr. 1684), but it would depend on how the hump is equipped. I have not worked with a hump that was efficiently equipped, so cannot answer your question. Our company had two hump yards in Chicago, but our hump at the time could not be considered with the ones they have in some of the yards in the Chicago terminal now. We had no retarders or anything of that kind. We abandoned ours because we could switch more cars on the flat. We had a better lead. We could shove them in faster. (Tr. 1685.) We had a good gravity yard and a good lead to work on, and we could switch more cars on the flat than we could over the hump, and as the result of that experience we gave up the hump, and we could do it cheaper also. We handle about 7500 cars per day in Chicago, and during the period covered by the 1026 cars, while I do not have the exact figures handled each month, would say we averaged between 7000 and 7500 cars per [fol. 1023] day, I mean to say. (Tr. 1686.) Anyway, I would say 7500 cars per day is a minimum for the Milwaukee to handle in Chicago; our maximum has been about 8200. (Tr. 1687.)

Chairman Campbell: Are we ready for Mr. Oliver's statement now, or is that all of the cross-examination that you have reserved?

Mr. Walter: Yes.

Mr. Davis: He has waived his cross-examination of Mr. Saur, as I understand it.

Mr. Walter: I think we will save time by putting Mr. Oliver on in the morning. (Tr. 1688.)

C. W. Galligan, recalled, testified as follows:

Direct examination.

By Mr. Davis:

Have carefully checked and analyzed Exhibit 89 filed by Mr. J. S. Brown of the Chicago Board of Trade, purporting to set forth switching rates applicable in switching districts of St. Paul-Minneapolis, Omaha, Council Bluffs, Kansas City, Peoria, and St. Louis. (Tr. 1688.) The illustrations in this exhibit should be subdivided: first, road haul; second, to and or from connections in the district; and third, intradistrict single line.

The section designated by me as 1 (road-haul rates) embraces approximately 30 per cent of the exhibit, and these charges are universally absorbed by the line enjoying the in- or outbound haul, and such rates presently in effect in the Chicago district are not involved in this proceeding. (Tr. 1689.) This absorption enables the carriers with their line-haul traffic to reach industries on connecting lines. [fol. 1024] This reciprocal arrangement making available the use of connecting lines' terminals is a mere matter of bookkeeping as between the roads entering into the arrangements; and the rates covering, which are much in the nature of divisions and have always been made without any regard to the cost or value of the service, on the theory that what is done by one railroad for another is offset in transactions of this nature. The extension of terminal facilities by transportation companies through the medium of reciprocal arrangements is entirely dissimilar from a proposition involving a local movement between points in a switching district for the public. (Tr. 1689.)

Section 2, intradistrict switching, as designated by me, embraces approximately 30 per cent or more of this exhibit, and to the extent it purports to show those charges in the towns mentioned, is defective, as in each instance it shows

but part of the total charge applicable to the intradistrict movement. Such charges in Mr. Brown's exhibit are merely the portion of the through charge accruing to the road whose charges are shown on a movement between a location on one road and a location on another line within the same district. (Tr. 1690.) No mileages are shown for any part of the entire intradistrict movement.

Page 2 of the exhibit shows charges of the Chicago & Alton at Kansas City, Missouri, published in its tariff I. C. C. A 1676. Item 1 shows intradistrict rate of $8.10 per car, applicable on grain and grain products received from connecting lines, destined to elevators or mills, except when from the St. Louis-San Francisco Railway, where the charge is $6.30 per car on grain and $4.95 per car on grain products. To these charges must be added those of the originating line handling the car up to its connection with [fol. 1025] the Chicago & Alton. Page 1 of the exhibit shows charges of the Santa Fe at Kansas City, and if the car originated at elevator "A" on that road, its charge up to its connection with the Chicago & Alton would be 2½ cents per hundred, minimum 80,000 pounds, or $28.10 per car. (Tr. 1691.)

On page 2 of the Exhibit under heading "Chicago & Alton", item 2 shows charge of that road for hauling grain from mills or elevators on its line to connections, (Tr. 1691) 2½c per 100 on grain, minimum weight 80,000 pounds on wheat, 60,000 on corn, and 40,000 pounds on barley, and a car moving from mill or elevator on this road to an elevator or industry on the Santa Fe must pay the charge of that road shown on page 1 of the exhibit to determine the correct total intra-district charge on this movement. (Tr. 1692.) Page 4 of the exhibit under heading, "Chicago, Burlington & Quincy", the last paragraph under subheading "Kansas City, Missouri", item 1 purports to show the charge of the Burlington between its connection with certain railroads in North Kansas City and industries in North Kansas City. This item is incorrect. It should show the charge set forth therein as that portion of the charge accruing to the Burlington on movement from a point on a connecting line at North Kansas City to an industry on the Burlington at North Kansas City. The charge according to the Burlington from an industry on its line at that point to a location on a connection at North Kansas City is

a graduated scale ranging from 2¢ per hundred minimum 60,000 to 5½¢ per hundred, minimum 20,000 pounds. (Tr. 1692.) See page 64, Chicago, Burlington & Quincy, Tariff I. C. C., 15, 625. These charges just referred to must be added to those of the connecting line for handling the car from its connection with the Burlington to final destination in the switching limits of Kansas City, Missouri-Kansas. The same exception applies to items 2 and 3 of *of* this [fol. 1026] paragraph. The charges shown represent the Burlington's charge for moving cars from connection to destinations or industries on its line at Kansas City and on cars moving in the opposite direction the graduated scale previously referred to applies. Item 4 correctly states the charges but they represent only that portion of the charge accruing to the Burlington in connection with a movement intra-district and another charge beyond the Burlington must be added, (Tr. 1693) to obtain the total charge for the intra district haul. A typical movement would be a car of grain from an industry on the Burlington at North Kansas City to a location on the Wabash at that point on which total charge would be $20.00 per car, made up of 2¢ per hundred, minimum 60,000 pounds or $12.00 per car to the Burlington and 2¢ per hundred minimum 40,000 pounds or $8.00 to the Wabash Railway. (Tr. 1694.)

On page 4 the first item purports to be switching charges of the Burlington at Council Bluffs, Iowa, the first paragraph of this item shows intradistrict charges as $3.15 per car. It applies between connecting lines and industries but the charge represents only that portion accruing to the Burlington for an intra district movement. (Tr. 1694.) There must be added another charge for the handling of the car by another line up to the connection with the Burlington. This charge is not correctly stated as the item carries a provision for a minimum through charge of $6.30 per car.

Mr. J. S. Brown: Where there is a minimum charge of $6.30, that would be for the total movement and not for the Burlington charge, would it not? (Tr. 1695.)

The Witness (continuing): If you had listened to me Mr. Brown you would not have had to interrupt, there is that very statement in my statement which says 'as the [fol. 1027] item carries a provision for a minimum through charge of $6.30 per car.'

The charge of the Burlington between industries is 2c per 100 on all commodities except coal, on which the charge is 24c per net ton, minimum $9.00 per car. (Tr. 1696.) The second item of this paragraph sets forth charge of the Burlington for hauling grain between elevators served by First Avenue River track of 1½c per 100 minimum $6.30 per car and on a 60,000 pound car the charge would be $9.00, the maximum haul on this track being one-half mile and the minimum, a few hundred feet. The second item on this page shows switching charges at Omaha, Nebraska. I understand the Omaha switching district is subdivided into rate districts and the charge varies according to district. The intradistrict charge shown is for that portion of the haul on the Burlington. (Tr. 1696.) And there still would be an additional charge for the carrier handling the car to its connection with the Burlington. The Omaha district hauls are short, ranging from 1 mile to a maximum of 5 or 6. Referring to page 18, setting forth rates published in agent Boyd's tariff, I. C. C., A-1886, applicable in the St. Joseph switching district, the first item is incorrectly stated. The $4.50 per car charge shown for the Union Terminal Railway applies only on grain for mixing, blending and milling; on other grain the charge is $6.30 per car. (Tr. 1697.) The second item covers reciprocal switching rates which are absorbed by the road haul carrier. For industrial or cross town switching, a graduated scale applies ranging from 2c per hundred, minimum 60,000 pounds on Class "E" articles to 5½c minimum 24,000 pounds on articles rated fourth class or higher; being the charges accruing to the originating line, to which should be added the charge of the delivering line. The maximum distance in cross town switching at St. Joseph is not in excess of 4 miles and the minimum about a quarter of [fol. 1028] a mile. (Tr. 1697.) Page 15 sets forth switching charges of the Northern Pacific at Minneapolis, their tariff I. C. C., 8391, the first item on this page being incorrectly stated. Intradistrict charge is shown as $3.15 per car but the charge now in effect is $8.10 per car shown in Northern Pacific Tariff, I. C. C., 8447, effective January 10, 1928. The road haul rate is correctly shown but that charge is absorbed by the road haul carrier. (Tr. 1698.) The second item is a reciprocal charge. The 3rd, 4th and 5th items are correctly stated as to intra district rates, but these

rates apply for the portion of the haul of the Northern Pacific, to which must be added the additional charge of another line handling the traffic to or from its connection with the Northern Pacific, These rates are admittedly low but are for extremely short hauls and the carriers operating these rates advise that they by no means represent the cost of the service. (Tr. 1698.) Pages 19, 20, 21 and 22 of this exhibit show charges of the Terminal Railroad Association of St. Louis in its Tariff I. C. C., 131. The items on page 19 apply from and/or to connections of the terminal railroad and connections with other railroads in St. Louis, Missouri, representing only a portion of the total charge for the through movement, and the charge up to and beyond the connection of the terminal by other lines, in order to complete the haul, must be added to determine the total charge for the through movement. The first item on page 20 sets forth only a part of the total charge for the through movement. The 2nd item is correctly stated. The 3rd applies only on Illinois State traffic subject to a minimum of $6.30 per car; the 4th applies on Illinois State Traffic and subject to the same minimum charge; the 5th item is correct but a portion of it applies to traffic moving between elevators and mills in St. Louis and elevators and mills in East St. Louis, which crosses the river on one of [fol. 1029] the bridges, and it is not proper to describe these as switching rates. (Tr. 1699.) The balance of the item applies between connections of the terminal at St. Louis and track connections of that company in East St. Louis, and is an intermediate charge for the service of the terminal. Additional charges beyond its local connections in East St. Louis must be added to determine total charge for the through movement. The 6th, 7th and 8th items on this page refer to absorption of switching charges on local movements within the East St. Louis-St. Louis districts. The items on page 21 are correctly stated but impossible to analyze because of the complicated or confused manner in which the rates the set forth. The 3 items on page 22 are also proportional rates applicable from, to or between connections of roads stated and to determine total charge, additional charge from or to connections of roads named must be added. On page 17, the heading "Peoria-Pekin

districts'' is misleading. It might create the impression that these charges apply for movements between industries at Peoria and industries at Pekin but the rates do not so apply. The Peoria switching district and Pekin switching district, (Tr. 1700.) are separate and distinct switching districts. (Tr. 1700.) For movements between Peoria and Pekin, road haul charges of the Peoria and Pekin Union Railway or the Peoria Railway Terminal are assessed. The charges shown in first item apply only to movements either wholly within Peoria or wholly within the Pekin district and not between Peoria and Pekin. In the second item on this page, are switching charges accruing on road haul traffic having origin or destination outside of Peoria or Pekin district. And these charges are absorbed by road haul carriers. In the 3rd item on this page the charges represent only a portion of the total charge for the service. The $4.00 charge shown in the [fol. 1030] last item on this page is in the nature of a transit charge on grain handled into and out of Peoria by the Rock Island. The distances cars are handled in the Peoria and Pekin switching districts range from approximately 200 feet to 3 miles, with the exception of the movement to the American Milling Company, where the distance is about 4 miles. The 3rd section into which this exhibit has been divided by me refers to intradistrict single line rates and but few of these rates are in the exhibit. On page 2 is the rate of the Chicago & Alton Tariff, I. C. C., A-1676. (Tr. 1701.) grain from the Alton elevator or the Kansas elevator to the Zenith Milling Co., is $6.30 per car. The distance in the first instance being .34 of a mile and in the second, 2.8 miles. This rate is low and I assume was made for the reason that the Alton road can expect another haul on traffic moving from the Zenith Milling Co. On page 3 is the rate of the Chicago and Northwestern Railway at Council Bluffs, Iowa, for a movement between elevators on the First Avenue River track of 1½¢ per hundred, minimum $6.30 per car. As most of this traffic loads 80,000 pounds or over per car charges would be around $9.00 or $10.00 for a haul approximating one half mile. A similar item on page 4 applies to the Burlington for a similar movement. Another item on page 16 applies on the Wabash Railway at Council Bluffs with a rate of 2¢ per hundred, minimum $8.10 per car for single line haul. A similar

item on same page applies under sub-heading "Omaha" and another on the same page under the heading "St. Louis and the East St. Louis" where the charge of $15.00 per car is shown for single line haul between industries on the Wabash. (Tr. 1702.)

The conditions at the points shown in the Exhibit and in the Chicago district are not similar. (Tr. 1703.) There is no switching district in the United States where conditions are similar or substantially similar to those in Chi- [fol. 1031] cago where the Chicago Terminal switching district covers an area of some 600 square miles with over 5,000 miles of steam railroad track in which 27 trunk lines and switching railroads operate to serve over 4,000 private industries in addition to numerous team tracks and freight houses and where the minimum haul on grain is 1 10 of a mile and the maximum 53.16 miles, the average haul being 15.32 miles on grain in Chicago. (Tr. 1704.) We took these mileages from Exhibit 11 A.

Cross-examination.

By Mr. J. S. Brown:

As to the rates I said were incorrectly stated, in each instance, I stated the correct one. Because you did not join two rates together I did not say they were not correctly stated. I did not make that statement as to these rates from a connection. Where I said the rate was incorrectly stated, I refer specifically to the figures. One of them was in Minneapolis where you had an incorrect figure and another in some other city where you had $3.15 or something of that sort and with these two exceptions, as far as I was able to check the rates are correctly stated in your exhibit. I did not check every rate in the exhibit, of course. I checked the exhibit to some extent but did not check all the things I have mentioned in my statement here. (Tr. 1706-1707.) Taking a 2 line haul on grain in the Chicago district, I said your exhibit was not clear. That is what I said, because it did not show the total charge for the through movement.

You could not take the tariff of any railroad in Chicago, stating a rate on that railroad from an elevator to a connecting line and from a connecting line to an elevator and hook it up and show what the through charge was unless

you had an actual movement; (Tr. 1707.) But if you wanted to show a representative rate, I would not show part of the movement and say that was the rate on grain [fol. 1032] in Chicago. I would show single line rates as such and if from a connection, would undertake to show what the through charge would be in order to make it clear that the charge you quoted was not the total charge but only for one part of the haul. I did not do that as to my Exhibit 85, because it is not that type of exhibit. Exhibit 85 shows the exceptions over and under the Lowrey basis. My Exhibit 85 shows each individual rate from a connecting line to an elevator and from an elevator to a connecting line. (Tr. 1708.)

No grain that moves in Chicago between elevators or between a mill and an elevator or between two mills or between two industries in Chicago is embraced in the Lowrey tariff. (Tr. 1708-1709.) On a movement of grain from the Northwestern elevator to another elevator in the South Chicago or the Calumet district to find the rate, I would look up the tariff and find it but I could not tell you what tariff it is in now; I do not have those tariffs before me. I would take the Northwestern tariff because it would be the initial line. I do not know how that charge would be stated by the Chicago and Northwestern but probably would show from Chicago and Northwestern elevator to its connecting lines. (Tr. 1710.)

Mr. Brown: Just as it is in Exhibit 89?

The Witness: But if I wanted it to indicate the switching charges on grain in Chicago, I would not just put down the Chicago & Northwestern charge from an elevator to a connection and say that was the charge on grain in Chicago.

Mr. Brown: Neither would I and I have not done that either in my exhibit.

The Witness: Well, it shows here it is the charge of the different railroads whose tariffs are shown here and what I stated was that it is incomplete in that it does not show [fol. 1033] the charge for the actual haul up to or beyond the connection of the road whose rates are named in this exhibit and that must be shown in order to determine what the total charge is for the movement in the Chicago district or any other district. Therefore, it cannot be used for comparative purposes. (Tr. 1710-1711.) Having

traced the Chicago and Northwestern movement from the Northwestern elevator to its connection either the Indiana Harbor Belt or the Belt Railroad, I do not know how I would find the charge stated for either of the latter roads for the service either might perform thereafter. I do not have the Belt Railway Tariffs before me. I do not know that the charge from the Belt Railway to the Belt elevator would be stated as so much per car. Possibly it would. It would be the proper manner of publishing it. The rates stated in my Exhibit 85 show from the connections in some cases.

Mr. Brown: And are they stated any differently than they are in my Exhibit 89?

The Witness: But that exhibit is not a comparison and it is not filed with the idea of showing a comparison of rates of these various towns with the rates in Chicago. To make such a comparison, you must have the total rates, the total charge.

You could get the total charge out of Exhibit 89, the same as out of my Exhibit 85, by digging around in there. Nobody is trying to dig that out of Exhibit 85 because it was not filed for that purpose. Exhibit 85 was not filed with the idea of showing the Commission that today certain railroads in Chicago are charging for their haul from a connecting line to an elevator or from an elevator to a connecting line and also between elevators on their railroads, certain amounts per car. (Tr. 1712.)

Mr. Brown: How could the Commission tell just what the rates would be out of your tariffs any more than they [fol. 1034] could tell them out of this if they did not know what the actual movement was?

Witness: If I was undertaking to put before the Commission what the rates are in the Chicago district on grain and for through movement, I would show it and not under the heading of one road in one tariff, show from a connection to an elevator and then leave it, producing the impression that that is the charge for handling grain in the Omaha or Council Bluffs or the Kansas City district. (Tr. 1713.) That is only a part of the haul. I did not say in speaking of the rates of the Santa Fe and Chicago & Alton at Kansas City that they were made without respect to the cost of service or profit to the carrier. But I did say that with respect to the rates in the St. Paul-Minne-

apolis district. I would not say that with respect to all of the per car rates. (Tr. 1714.)

I do not know whether the $28.10 per car charge on a movement between the Chicago & Alton cross town to the Santa Fe referred to by me would be absorbed by any road haul carrier getting that movement outbound. I do not know anything about the absorption. I am not dealing with the absorption on road haul traffic. My comparison there was for the purpose of showing what it would cost to handle a car of grain from an elevator or mill on the Chicago & Alton to a mill or elevator on the Santa Fe or the reverse of that haul. I mean by that not the cost but the charge the shipper would have to pay. (Tr. 1715.) I do not recall the number of the rates I said were incorrectly stated in your exhibit or where probably the item had not been completed. As I read them off, I stated where there were errors in your exhibit. (Tr. 1716.)

In reference to my comments on page 18, regarding mixture of products for reshipment at St. Joseph, I mentioned [fol. 1035] that to call attention to the fact that the charge in your exhibit applies on grain that is milled, etc., or in other words given transit while on other grain there is a higher charge. (Tr. 1716.)

I said the maximum haul in St. Joseph would be about 4 miles. I have been in St. Joseph, Missouri, and have been around quite a little there. I have seen them switch cars up the alleys and down the streets there, but they do that in quite a number of other places also. (Tr. 1717.) I said there was not any place in the United States where conditions were comparable with the situation at Chicago, and I insist that that is a correct statement, and I can take you around Chicago and show you a number of places where the switching runs up a street or an alley as in St. Joseph. You furnish a machine some day and I will take you out and show you a number. (Tr. 1718.) I said in connection with page 15 regarding Northern Pacific charges, that I had been advised they did not represent the cost of service, and this information came from L. R. Capron, traffic manager of the Northern Pacific Railway.

Mr. Brown: What did he say to you in connection with that?

The Witness: He analyzed this part of the exhibit for me.

Mr. Brown: I am asking you what he said?

Chairman Campbell: Well, now, I do not think we need to go into that.

Mr. Brown: Mr. Commissioner, are you going to take testimony like this, to the effect that it does not represent the cost of service, when he got it second-hand from some traffic man who probably does not know anything about the cost?

Chairman Campbell: Well, you have got that much out of him now, and you can argue in your brief that his testi- [fol. 1036] mony does not amount to anything because it is hearsay. (Tr. 1719.)

The Witness: As to rate of 2 cents per hundred pounds on grain and grain products, 10,000 pounds per car, the middle item shown on page 20, the rates between St. Louis, Missouri, and East St. Louis and Granite City, are not considered as switching charges. There is a river transfer haul—the Terminal Railroad Association over their own rails in St. Louis and across one of the bridges there, and then handled again in East St. Louis switching district, which is a separate and distinct district. (Tr. 1720.) If it originates in an elevator on the Terminal Railroad Association in St. Louis and is delivered to a mill or elevator on the same system of railroad at East St. Louis, I would call it a road-haul and the rate 2 cents per hundred pounds. The railroads built 5000 miles of track in Chicago to take care of the traffic, and they did not exercise poor judgment in so doing, but they should have a reasonable charge for the service they perform over them. (Tr. 1721.)

Cross-examination.

By H. J. Campbell:

In making statement that transportation conditions surrounding switching in Chicago were not comparable with those in other cities, which have been mentioned, I based it on the fact that a terminal the size of Chicago, with the area it covers, the volume of movement in the district, freight trains and passenger trains moving sometimes over the same tracks, creates congestion and the operating conditions of course are not comparable with the situation in St. Joseph or Council Bluffs. The fact that Chicago is larger is not the only factor I take into account in making

that statement. I mentioned the large volume of movement in the district, frequently through congested portions of it. There are probably other features that are different [fol. 1037] from those at St. Joseph, Missouri, for example. There are interruptions by passenger trains, switch trains held up at crossings, and matters of that nature (Tr. 1722), and suburban service on many of the roads, which must be given some preference over switching movements; and a very large portion of trackage in Chicago is elevated, with no elevation in any of the other cities that I know of.

When I was freight traffic manager of the Chicago & Alton Railroad, which served Chicago, Peoria, St. Louis, East St. Louis and Kansas City, I was out on the road a great many times and made a number of inspection trips over the terminals in those cities. At St. Louis we had an inspection; the Local Freight Agents Association had an inspection trip every year at that time, one once a year, and we went all over the terminals. They had inspection trips at Peoria, and I have been over all those terminals, not only on the trains, but I have walked over a good portion of them (Tr. 1723); and am thoroughly familiar with the conditions there, at Kansas City, St. Louis, East St. Louis, and Chicago. At Minneapolis I have been over the terminals to some extent, but not all over them. Am thoroughly familiar with the conditions at St. Joe, Missouri, and Council Bluffs. Have been in those cities and have been around the terminals, but did not go over all of them.

I enumerated other factors besides length of haul and density of traffic in Chicago. (Tr. 1724.)

Mr. Brown: Do you think shippers ought to pay for this detention caused by passenger traffic, suburban and otherwise?

The Witness: Shall I answer that?

Chairman Campbell: I am not sure that having offered the exhibit by way of comparison for the purpose of rates in Chicago, that the burden of proof is not upon the person offering it to show that operating conditions are the same. [fol. 1038] This witness has made the statement that they are different and has analyzed it and given a great many reasons why he believes that they are not the same; therefore I do not see any use in asking him for more when he has quit stating them.

Mr. H. J. Campbell: I was not asking him for more, Mr. Commissioner; I was simply trying to get from him what the different elements are.

Chairman Campbell: Well, he has given a number of different elements here; if he does not give any more you will have the right to assume that that is his complete answer.

Mr. H. J. Campbell: All right.

Chairman Campbell: We will adjourn the hearing until tomorrow morning, September 21, 1928, 9:30 Chicago daylight saving time. (Tr. 1726.)

Hearing reconvened at Chicago, September 21, 1928, at 9:30 o'clock A. M.

Mr. Davis: Before I begin with Mr. Tholin, I might say that yesterday I withdrew exhibits 8-A and 11-B, which dealt with the Chicago Heights situation, and have now distributed other exhibits to substitute for them.

Chairman Campbell: Very well.

K. E. Tholin, recalled as a witness, testified as follows:

Cross-examination

By Mr. Davis:

It is difficult to determine the time spent on this particular part of the work in compiling Exhibit 96. We had as many as 7 men at one time working on this case, and part of the time only two or three (Tr. 1728); and began [fol. 1039] a little work in July, 1927, but the working papers in support of carriers' exhibits were not available until, I think, it was about March 1st of this year. The work done covers not only the matter of detention, which is principally set forth, but, as stated yesterday, a study of the routings and other various matters in connection with the cost study. But we worked off and on beginning July, 1927, and since March this year have worked more or less constantly on it. (Tr. 1729.)

Mr. Davis: Is your position as representing the Illinois Commerce Commission, or whomever it is you represent

here, if not that Commission, while on the stand giving testimony and presenting your Exhibit 96, any different than your position was when Exhibit No. 83 was compiled, it being the composite exhibit and signed by you? (Tr. 1729.)

Mr. Walter: Well, Mr. Davis, that is a pretty broad question. Exhibit 83 covers a multitude of things.

Mr. Davis: Oh, no.

Mr. Walter: Now this exhibit deals with one.

Mr. Davis: I know, but he signed this and Mr. Slater said that he was not representing the views of the Illinois Commerce Commission as such, then. I want to know if his position is different on the witness stand than it was when he was working in the joint conference.

Mr. Walter: As to whether what he states is his view or the view of the Commission, is that it?

Mr. Davis: Yes.

Mr. Walter: I thought he made it very plain that it was his view altogether.

Mr. Slater: Yes.

Mr. Davis: On the stand?

[fol. 1040] Mr. Slater: Just a moment, Mr. Davis. Mr. Tholin has at no time, and neither have I, the right to express the view of the Illinois Commerce Commission in this case.

Mr. Davis: Well, that is what I want to know.

Mr. Slater: So his position must be the same, that he never has expressed the views of the Illinois Commerce Commission.

Mr. Davis: That is all I want to find out, if his position is the same. You will adopt that as your answer, will you?

The Witness: Yes, I will.

Mr. Davis: That is all. I just wanted to get straight on that because of the statement made at the time that this exhibit was introduced.

The Witness: Well, that is correct. (Tr. 1730.)

Chairman Campbell: Are there any other witnesses to be cross examined? Are there any others, those whom I might call, pick-up witnesses who want to be heard, who have not yet been heard, who are not being put on by Mr. Slater? Apparently not. Very well, then, Mr. Slater.

Mr. Slater: During the hearing at different times information was requested by the Illinois Commerce Commis-

sion or by myself as representing that Commission. I do not recall all the information requested, but presume the carriers have followed it as the requests were made. If there are any of the railroad witnesses present, or anyone who has been requested to furnish information, I would like to have them furnish it at this time.

Mr. Davis: As far as I am advised, we have tried to answer all requests. We have gone throught the record with the idea to set out the requests of the different parties, and we have tried to answer all of them.

Mr. Slater: They may have been answered; I have not been present all of the time; but if there is anyone present [fol. 1041] having information asked for (Tr. 1731), I ask that they step forward and give it at this time. One request made during the hearing was that certain of the short line railroads furnish the Commission a statement of the number of cars handled in different classes of service; that may not have been made on the record, but I recall that we wanted the information; but if not requested on the record, it is too late now to ask for it. We will find out from the record itself, but if anyone has the information we would like to have it at this time. Apparently there is no one present prepared with the information now. (Tr. 1732.)

Mr. Davis: Mr. Hurd is here, if you are ready for him on the cars you asked about yesterday, but I think as far as the record is concerned, that the information mentioned was asked for and is contained in Exhibits 90 and 91, or 89 and 91.

Mr. Slater: All right. (Tr. 1731.)

Ray Hurd, recalled as a witness, testified as follows:

Direct examination.

By Mr. Davis:

Yesterday I was requested to produce such records as we might have as to the movement Belt Railway index No. 586, car St. Paul 305276, moving from the St. Paul to the Athey Company at Clearing, showing the classification movement of the car from the Clearing yard up to the low line, and this is a copy of the out card showing the car

humped from No. 4 track in the west receiving yard, having arrived on that track, by Conductor Freiermyer, Belt engine No. 114, in a train of 63 cars. This was the 28th car, and was humped to track No. 19. (Tr. 1733.) The car was humped to track 19 in the east classification yard; [fol. 1042] the next paper record that would of course be a rehump card, because the industry tracks are on the west side of the yard. (Tr. 1734.) We have no paper record of the car moving from track 19 in the east classification yard to track No. 3 in the east receiving yard, but have a paper record of the car being humped from track No. 3 in the east receiving yard to industry track No. 52 in the west classification yard. Our first record shows it was humped to track 19 on the east side, and the written record is that it is on track 3 in the east receiving yard, ready to be humped again. Track 19 and track 3 are not the same, they are two separate and distinct yards, probably ¾ of a mile apart. To get a car from track 19 to track 3 on the east side, a switch engine would have to move it. (Tr. 1735.) The next record is the industrial clerk's record of a check of track No. 52 in the west classification yard, given to the conductor when he starts on his day's work. The car in question was the 14th car in his train. We do not have a paper record of that car moving from that point to the entrance to the industrial lead, which we call the low line. The next record is the check of the demurrage clerk, showing it placed the next morning, so those are the paper records that we have on that particular movement.

Cross-examination.

By Mr. Slater:

I do not know just how you would define classification. Our industries are all served from the west end of the yard, where we have four tracks set aside for that purpose. (Tr. 1736.) Trains coming in from the east side, those cars have to move over the hump down to the receiving yard, where they are checked and a cut-out card made such as this, so that the tower man can classify them. When [fol. 1043] they move from this classification yard on the east side down to the east receiving yard they are pulled there by the switch engine, then of course the hump engine comes against them, shoves them up, and they go down

into the industrial tracks where they belong. We keep a segregation of the engine hours during these different classes of service. It is not classification in the sense that a yard engine would be on, batting them down the various tracks as it would in the case inquired about, C. B. & Q. car 168589, moving from Chicago By-Products Coke Corporation at Hawthorne to the Austin Coal & Coke Company at Cragin, as to the movement of the car in the Cragin yard. This first sheet is a check of the train arriving at Cragin on track No. 3. Belt engine No. 96, at 9:45 P. M. on the 11th, going to the industry, the Austin Coal & Coke Company. (Tr. 1737.) We do not have a paper record of that yard engine switching the car from that track to the next. The next record would be the industrial yard clerk's record, and the next day being Sunday shows blank; on the 13th, the following day, the card shows it on track No. 15, which is the hold track, indicating that the industry was not ready for the car. It was car No. 6 that day. On the 14th it was still on track No. 15, being car No. 2. On the 15th it was still on track 15, car No. 4, but on the 15th at 2 P. M. the yard clerk hands the industrial engine a switch list for the industries, and this car shows up as the second of the three-car cut for the Austin Coal & Coke Company for spot No. 6, placed that afternoon, showing in the paper record the next morning in a check of the industry itself, the demurrage record. Those are the paper records we have on that movement; so these are the papers that we have of that movement, and these I hand you, Mr. Slater, are copies of them. (Tr. 1738.)

[fol. 1044] I did not make a check for each car. Our set-up was made from knowledge of the operations moving the car in a normal movement. This car did not move normally. It moved to the hold track, but my set-up would show the car moving as if it did move normally, because this would be probably an exception. In the check I spoke of yesterday I did not go through the details of each car included in my statement. I merely checked the cars in and out of the yards and did not attempt to check the number of times that a car may have been classified by a yard engine. (Tr. 1739.) My cost study did not reflect actual movement of the car nor reflect the credit from the demurrage charge that was collected from the shipper while it was on the hold track. My check did not take into con-

sideration nor count demurrage matters. I did not check the car detention at all. (Tr. 1739). In the assignment of the car in my original computation I did not have any service to the hold track because as I say, we did not check that far.

L. Anderson was duly sworn and testified as follows:

Direct examination.

By Mr. Davis:

Am special accountant of the Illinois Central and Chicago & Illinois Western and was a member of the cost study committee of the railroads and represented these two roads on the committee. (Tr. 1740-1741.) I made the assignment of the element numbers in regard to traffic on those two lines for the month of September, 1926, involved in the cost study and am here at the request of the Illinois Commerce Commission.

Cross-examination.

By Mr. Tholan:

Speaking of the Chicago & Illinois Western; I made the [fol. 1045] assignment of these elements of cost from the information reflected from its car record which shows movement of cars between our 2 yards and records the replacement of the car at the industry. (Tr. 1741.) I looked up every individual car on both of these records and ascertained what they showed. The record does not show the classification of a car in the yard or show weighing services performed. We did not include weighing service in our cost study but the classification is based on information furnished by the general yard master. (Tr. 1742.) We did not use any unusual costs on the Chicago & Illinois Western, at least not that I recall now, No Sir. The industrial cost of $7.71, shown for the Steel Sales Corporation would not be an ordinary cost for that switching. Perhaps that is an extraordinary cost in that case, (Tr. 1742) but do not believe it enters into our cost study. The Steel Sales is located adjacent to our Crawford Avenue yard and the individual cost includes the time spent at the Steel

Sales and the time moving between the yard and the industry. It is a short move and no separation was made as to transfer service. The time on leaving the yard until they returned was charged to the Industrial service for Steel Sales which perhaps accounts for the higher charge than the average for industrial service. Except in this instance, our elements show transfer between yard and industry on the Chicago & Illinois Western. (Tr. 1743.) As to the Illinois Central the cost elements were assigned from our car record which reflects the offset of cars from interchange points or from or to the road and also movements between the yards. We do not have any record as to classification of the Illinois Central either. The index number 125 on the Illinois Central shows three classifications in Markham which must be a typographical error as we did not furnish over 2 classifications at the Markham yard. We did not set up separate classification of the cost [fol. 1046] at Markham for the South bound hump and the North bound hump. The reason for 2 classifications at Markham yard is because business received from an interchange point taken into Markham yard destined to an industry, we might say in the West Pullman District is received at Markham in a transfer cut which necessitates passing all the cars over the South bound hump and then all going to the West Pullman district are again given classification over the North bound hump in order to place them in an industrial cut for the next morning to the West Pullman district. (Tr. 1744.) We had no exceptionally high cost on the Illinois Central that we included in our cost study. I believe we had one or two charges covering team track switching. I do not believe we used the cost of $7.05 at the Standard Oil Co., at South Chicago in our cost study. We had no yard stick to determine what was high cost. We used whatever cost was developed, whether high or low and we are not attempting to use, either high or low cost. We developed actual cost of switching in an industry and applied it to our cost. If we did not have an element of cost developed from some movement in September, 1926, it was the practice to exclude that car from the cost study. (Tr. 1745.) I cannot say whether the West Pullman team track is open for industrial switching under the Lowrey rates, as I am not familiar with the tariff but I can state that shipments of gravel and stone to the R. F.

Conway Company on the Illinois Central shown as West Pullman team track were delivered from the West Pullman team track. That was developed from an examination of the records of West Pullman. If the R. F. Conway Co., had its own temporary industrial track in that neighborhood in 1926 it would be the same as our team track. It would be located in conjunction with ours. It shows in our records as a team track delivery and we would class it as such. (Tr. 1746.) The cost during a period of high volume would [fol. 1047] be somewhat different from the cost in a period of low volume. (Tr. 1746.) It depends somewhat on the volume of business.

Cross-examination.

By Mr. Walter:

We would have no car record showing cars delivered at or pulled from the plant of the By-Products Coke Corporation by the Chicago & Illinois Western which would be similar to the industries referred to in my testimony. (Tr. 1747.)

G. F. VIVIAN, recalled, testified as follows:

Direct examination.

By Mr. Davis:

I was the representative of the Chicago, Milwaukee, St. Paul & Pacific Railroad Co., in making the cost study and made the assignment of the element numbers on behalf of that company.

Cross-examination.

By Mr. Tholin:

I handled the entire proposition as to the preparation of cost during the study week. All the supervisors of the operating department assigned to the case reported direct to me and were 11 in number and all of those men were conductors taken off their various yard and transfer runs. I made all of the assignments in building up the cost study with the aid, of course, of various operating men. The

conductors were instructed to count all cars handled when there was work performed on them. (Tr. 1748.) If we had to switch a string of a hundred cars to get one, we would count one on that movement, being only one car handled, upon which work was done. The others would be merely taken off the same track and shoved back on again. (Tr. 1749.) As to index number 36, Indiana Harbor Belt to the National Tea Co., the interchange at Bensonville, we [fol. 1048] placed two classification charges on the movement at Bensonville because we had to break up the train in the one classification and had to make up a transfer in the other. That would be true of all cars moving out of Bensonville, though there might be a few instances where it is not true. Index numbers will indicate the exceptions if there are any. We determined when to apply 1 classification at Bensonville and when to apply 2 from the knowledge of the operating men who are working with me and other men. (Tr. 1749-1750.)

As to index No. 29, covering movement from Bensonville to Division St., we applied but 1 classification to that movement at Bensonville merely from the knowledge of the operating men in connection with the particular movement. Their knowledge was relied upon as to the number of classifications which should be given the car. (Tr. 1750.)

I made the indexes myself with the assistance of the various operating men but I do not remember the explanation of the operating men with regard to these two movements. It is too long ago; over a year ago, but it must have been satisfactory to me at the time or I would not have accepted it. I would not say that my attention was not called to the fact that there were 2 in the 1 case and only 1 in the other, because I worked on these things personally myself and we checked and rechecked as much as possible to see that everything was consistent. I know that condition was undoubtedly called to my attention. The operating man who worked with me on that is here in the room and can testify as to the reason for including the 2 in the 1 case and only 1 in the other. As to the 2 classifications at Kinzie St., if you refer to composite Exhibit Page 87, you will appreciate the reason for the 2 classifications. I might read a part of this answer. Kinzie Street,

[fol. 1049] as a whole is always pretty well congested territory. The particular item dealt with National Tea Co., having a 14 car capacity track with a surplus of from 40 to 60 loaded cars waiting for them daily, therefore, there is more or less additional classification on account of the order in which cars are requested to be placed. Transfer from Union Street brings these cars to Kinzie where they are set out and classified as to industries. (Tr. 1751.) After this classification, they are placed on the hold track and again classified after order of preference is received from industry. This shows the necessity of 2 classifications at Kinzie Street, compared with 1 at Union, where only the district classification is performed. More than 2 classifications are often made on the same car at Kinzie Street for firms having an excess amount of business such as the National Tea Co., and other industries on the consumer, hold and alley tracks. (Tr. 1752.) Hold and alley tracks, as well as consumer tracks are industrial spurs with many industries on them and that will fully cover the situation as to Bensonville or any other yard is concerned, that is sending cars into the Kenzie St., District, so far as Kinzie Street classification is concerned. (Tr. 1752.) In the indexes, we have not added any 3rd classification, confining them to the 2 classifications only. In a sense we are understanding our costs by the use of only 2 classifications instead of 3 or more as the case may be.

Referring to index 3 covering transfer movement from Bensonville to Western Avenue, classification there and transfer thence to Union St., and element 42 (Tr. 1752.) showing through transfer from Bensonville to Union Street of about 290 cars during the study period at a cost of 84¢ for the through movement while the cost of the combination including the classification in Western Avenue is about $1.22, we used the combination in certain instances [fol. 1050] because of the time of the arrival of the cars; rather than hold a car or a through transfer and delay the placement of the freight, it is better to keep it moving, therefore, they send it in piece meal transfers through Western Avenue. (Tr. 1753.) We do not have a record that will permit with a great deal of ease the checking of the car as to the particular train it moves in. Our conductors according to their working agreement with the company do not make any so called wheel reports or con-

sist reports of transfers. Our record is a track list. It indicates the conductor who is to handle the cars and when he takes the train he will cut out any bad orders and add any hot stuff the yard master wants. It is not a complete check. It is very difficult to follow our cars back as to the particular train that handled the car. (Tr. 1753.) Our car records show whether or not the car moved in piece meal service or moved in through service because the record will indicate if moving in through service Bensonville to Division Street. If moving in piece meal service, it will show the split as to the various yards that the car moved through. We checked the car records to determine exactly how the cars moved, but did not do it for all of the cars. We did not feel it was necessary. The operating men as I said, assisted me in the preparation of these index numbers; following that, we took our records and spot checked our cars.

Mr. Tholin: That is, you made up your indexes from an operating man's knowledge of the usual method of operation based upon the beginning point and the ending point and then after you had made up the index, possibly during the latter part of the Summer, you made some check of these indexes to see whether they were according to the actual movement or not. Is that it?

Witness: I would not say the latter part of the Summer now, Mr. Tholin, because it was done within a week of the [fol. 1051] close of the test period.

My indexes were prepared simultaneously with the cost study. They were started the day we received our first cars and we elaborated on them as we went through preparing our element numbers and index numbers. We ran our study from the 4th to 10th of August. I completed all the field work and dismissed the crew the first of September, the indexes being finished by that time. That was on the original 8 railroads, as to the others subsequently added, we took a subsequent period to prepare the information. Index No. 313 shows movement from Galewood transfer to Healy, classification there and industrial switching at the Wilcox Co., and index No. 311 shows movement into the Healy district but does not have classification there and those are correct as they stand. (Tr. 1755.) Some of the business going into the Healy district the classification work necessarily will be included in the

industrial work at the National Lumber & Timber Co., while at the Wilcox Co., the classification is done on the few tracks of the Healy yard if you can call it such. (Tr. 1756.) I have counted the cars inbound and outbound for industrial switching loaded and empty but there is no separate element for it.

Mr. Tholin: But by counting your cars that way you then have to apply your industrial switching cost as one cost for the car going in and another cost for the car coming out, do you not?

The Witness: I must, of necessity, follow my industrial car as to whether it is a reload, whether it went in empty or went out empty, as the case may be.

I consider that method as accurate as the other method used by other carriers, where they only counted loads. (Tr. [fol. 1052] 1756.) I do not know that it is any more accurate. It probably is not in the long run, but it adds some refinement to it and from my experience that is easier to follow. It is the course of least resistance. (Tr. 1757.)

I apply only one industrial switching charge where the car is a reload at the industry, otherwise by using the count of loaded cars it would be the total cost. (Tr. 1757.)

George B. Andeway, duly sworn, testified as follows:

Direct examination.

By Mr. Davis (Tr. 1757):

I reside in Chicago and am connected with the Pennsylvania Railroad and have been for 18 years or more. Am the representative of the superintendent and yard master and represented the Pennsylvania Railroad on the cost study committee. I assigned the indexes for the Pennsylvania Railroad which included both the Ft. Wayne and the Panhandle.

Cross-examination.

By Mr. Tholin:

In assigning the elements of cost, I followed the record of every car. We have records for about 95% of all the

movements within the Chicago Terminal district, (Tr. 1758) that is, transfers in interchange, transfers in industrial moves and hold track moves. We have 1 record of weighing service which I did not consult in certain cases. I could not make an index until after my cost study of engine hour cost was completed in the latter part of 1927. During the first part of September, 1927, I received from Illinois Freight Association several thousand car numbers covering cars moving in 1, 2 and 3 line hauls; and between the first of September and October 19, 1927, I checked each and every available record of the cars involved in the cost study. (Tr. 1759.)

[fol. 1053] Index No. 9B shows movement between American Maize and Taylor Street Team track, a one line haul and our complete record showed 3 cars moved on that index. Illinois Central Car No. 157404 was diverted through the plant and the cost set up under this index is correct for that reason. (Tr. 1760.) I do not know that our records for movements 47 to 275 show that the car moved from 55th Street to the Taylor Street team track. The move set up here is a normal one. (Tr. 1760.) Between the American Maize Products Co. and the Taylor Street team track they go on a hold track both at Colehour and at 55th St., and there is no cost set up or included in here. As to return movement our records would show whether they would go to 59th St., or 55th St. If I recall correctly, these cars move by way of grain alley through the North end of Union Depot and by the Panhandle to 59th St. In setting up my elements, I set them up as the cars moved during the year 1927 and not as they moved in 1926. We had unusual costs and cost on Albert Schwill was unusual. It shows up the facts, but I made use of that element. (Tr. 176-.)

H. Siddall was sworn and testified as follows:

Direct examination.

By Mr. Davis:

Am statistician for the Rock Island Railway and have been in its employ for 13 years. Was a member of the cost study committee of the carriers and made the assignment of the element numbers for our railroad.

Cross-examination.

By Mr. Tholin (Tr. 1762):

We have a car record system on the Rock Island, showing movement of all cars between yards and interchange points and between industrial side tracks. This record was followed in the case of every car in the cost study in order [fol. 1054] to get the car movement. (Tr. 1763.) The record shows whether the car is under load or empty as it moves from one place to another. Index No. 137 Southern car No. 153679 shows it came empty from the South Chicago yard. Until I saw the statement, I would not say that we furnished you information showing this car was a re-load at the Rosenbaum elevator. I have not with me here a copy of the information I furnished you. (Tr. 1763.) As to index No. 162, we used a certain combination transfer, X-4, the principle being to determine what the average transfer cost was between any two points. Some of the cars moving in through transfer and some moving in combination of locals. Our records do not show whether the train in which the car moved for instance between Burr Oak and South Chicago stopped at other points or not. It would simply show moving from 1 yard to another. The train in which the car moved may have stopped and cut our cars at other points, but there was no method by which I could tell. (Tr. 1764.)

T. J. Murphy was sworn and testified as follows:

Direct examination.

By Mr. Davis:

Am connected with the Elgin, Joliet & Eastern Railroad and was a member of carrier's Cost Study Committee in this case and made the assignment of the index numbers for the Elgin, Joliet & Eastern. (Tr. 1765.)

Cross-examination.

By Mr. Tholan:

I determined the movement of some of the cars from records. Where it was my knowledge that cars moved in

normal movements, I did not have to refer to records. (Tr. 1765.) The trains may stop at various stations enroute and they may not and in some cases they may move all [fol. 1055] the way through to destination. Referring to index No. 151, a movement from Illinois Steel at South Chicago to Walter Bates Steel Corporation, using an industrial switching movement or a transfer movement from the Chicago South Shore and South Bend Railroad, to the Gary Screw & Bolt Co. When this was assigned to the Walter Bates Steel Corporation, we used the transfer move from the Walter Bates Steel Corporation to the Gary Screw & Bolt Co., because they are not situated in the same locality. In getting the car to the Walter Bates Steel Corporation, we used the last transfer move that ended at the Gary Screw & Bolt Co., because that car came into Kirk yard, (Tr. 1766) and would be classified there and then leave on a transfer run that handles all these industries over what we call the city track. The Walter Bates Steel Corporation is about half or a quarter of a mile from the Gary Screw & Bolt Co. We used this transfer run to the Gary Screw & Bolt Co., because it would be a piece meal transfer on this particular run. We assigned weighing service from our records as we have records of all weighing services. I did not look up every one of these cars to determine whether it had 1 or 2 weighing services. At the Illinois Steel Company, all cars going in empty are weighed, both before and after loading. That applies to every car. It is the movement on outbound loads that we show in our cost study. I made no computation of the revenue we would collect for weighing service, my part in this study was only from an operating standpoint. (Tr. 1767.) I do not know of any unusual costs on the Elgin, Joliet & Eastern and the cost developed as shown in our 107, has been considered as normal costs. Very conservative, I should say. (Tr. 1768.)

[fol. 1056] F. A. Meyers was recalled as a witness and testified as follows:

Cross-examination.

By Mr. Tholin:

In the composite exhibit we show a combination of local moves between Gibson and Norpaul which are Gibson to

Chicago Ridge, Chicago Ridge to Argo, Argo to La Grange and La Grange to Norpaul, total $2.06, compared with the through movement of about 83¢ and we used the combination because cars actually moved at least in the main in local movements. (Tr. 1769.) We used the 4 particular movements in that combination because that is the way the cars normally run. That is normally when they make up these local trains they generally stop at the points mentioned. (Tr. 1769.) Referring to the elements mentioned, Gibson to Chicago Ridge being the first movement, shows there were 283 cars in the study which moved in 5 trains and another element, Gibson to Argo which would take in 2 of the movements with 1022 cars moving in 16 trains. The cars that move to Argo we run straight trains from Gibson at different times. Sometimes there will be a train, if the volume is heavy enough with the Chicago & Alton's at Argo he will probably set out his whole train at Argo; pick up his train there and go on West. (Tr. 1770.)

E. A. Mueller, being duly sworn, testified as follows:

Direct examination.

By Mr. Davis:

Am assistant chief clerk to the General Auditor of the Baltimore & Ohio Chicago Terminal Railroad, residing in Chicago and represented that railroad on the carrier's cost study committee. (Tr. 1770.)

[fol. 1057] Cross examination.

By Mr. Tholin:

In making the assignments I referred to actual records but not on each and every car. While we were making up the index numbers with the assistance of the operating men we made a spot check of approximately 100 cars. I cannot say offhand the number of cars we had in our study. In following out the method of using operating knowledge as to cars which normally move the operating men were right with me and I had their assistance in the matter. (Tr. 1771.) We used a considerable number of

combinations of local moves on the Baltimore & Ohio Chicago Terminal because from the knowledge of the operating men, that is the normal way the cars move. (Tr. 1771.) I do not recall that we had any unusual cost on our railroad. (Tr. 1771-1772.) We had no measuring stick to determine an unusual cost. Everything was based on the test period study. Whatever the test period developed we used and we had a car for the particular plant.

R. W. Fletcher was sworn and testified as follows:

Direct examination.

By Mr. Davis.

Am auditor of miscellaneous accounts of the Chicago, Burlington & Quincy Railroad and was the representative of that road on the cost study committee of the carriers in this case.

Cross-examination.

By Mr. Tholin.

In making assignments of cost I did not refer to record to find out exactly how the cars moved. We made the assignment according to normal movement of cars based on statement furnished by the operating department copy of which was furnished to you, Mr. Elmore and Mr. Oliver.

The statement showed normal routing and was used in [fol. 1058] connection with actual service as indicated by the C. S.-1's. (Tr. 1773.)

Index No. 42 including interchange element No. 80 amounting to 47¢ and not included — ~~index no. 70~~ may represent a difference in operating methods due to the fact that the Chicago & Northwestern may sometimes come in and pick up cars for their road, and where we sometimes make delivery to the Northwestern. There is an interchange cost charge wherever one is furnished under the normal routing of the movement. We checked that for each car to determine that we did really interchange it in this one case and therefore had the cost. (Tr. 1774.) In the other cases we did not interchange it, but the North-

western came in and picked the car up. (Tr. 1774-1775.) In setting up two industrial switching costs on all industries where we supplied the empty and moved the load, we determine the average industrial switching cost by dividing that by all the cars handled, giving one average cost for the service and the cost at that industry would be affected according to whether or not there was an empty car set or whether the outbound movement applied after a reload. We therefore have two rates for the industry. We consider that more accurate in doing it that way so as to include only one charge in case of a reload of a car. We had no unusual cost on our road that we excluded from our computations. The costs we used are the actual figures appearing in the records of the company as developed in the cost study period. (Tr. 1775.)

A. G. Nutt, sworn, testified as follows:

Direct examination.

By Mr. Davis:

[Vol. 1059] Am agent of Illinois Northern Railway and was a member of the carriers' cost study committee in this case; and made the assignment of the index numbers for my road.

Cross-examination.

By Mr. Tholin:

In determining the elements of cost to apply I did not trace every car from our records. We applied them from such records as were available and from my own knowledge as to the normal movement. We have weighing records but did not check them in all cases. (Tr. 1776.) We know what cars are to be weighed for each or our industries; we have those instructions standing for certain commodities. We did not have any unusual costs on our railroad. The costs we developed we used and had a car moving to the particular point. (Tr. 1777.)

Mr. Tholin: I will ask for just two more railroads, the Chicago & North Western and the Chicago, West Pullman & Southern.

Mr. Davis: Call Mr. Werner. You will excuse the Chicago Short Line, as I understand it, then? You just want the Northwestern and the West Pullman?

Mr. Tholin: Yes.

Mr. Davis: All right. (Tr. 1777.)

GEORGE P. B. WERNER sworn and testified as follows:

Direct examination:

By Mr. Davis (Tr. 1777.):

Reside in Chicago and am chief clerk to the superintendent of the Chicago, West Pullman & Southern, and was the representative of that railroad on the railroads' cost study committee in this case. (Tr. 1778.)

[fol. 1060] Cross-examination:

I prepared these indexes from the records of movements of cars from my general knowledge. I did not have records for all the information that I required. (Tr. 1778.) The elements assigned to Index 4 cover movement from Indiana Harbor Belt to Chicago Malleable Castings Company on our railroad and returned to the Indiana Harbor Belt empty. We got these cars out of the Indiana Harbor Belt yard at 118th Street and the interchange cost shown is $1.02. The next cost is the classification at Irondale, 42 cents. The next the transfer service from Irondale to the Panhandle at West Pullman. The next is the classification by the West Pullman switch engine; 1-A is West Pullman and is another classification which you will find on the West Pullman (Tr. 1779); 1-A was used both at Irondale and West Pullman. We have one classification cost which includes both of those points. Well, no, there are two different costs there. One is the classification at Irondale and the other is the classification at West Pullman by two different engines, shown by 1-A, but there is a classification 1-A at Irondale and classification 1-A at West Pullman. (Tr. 1780.) The next movement is a transfer to the Chicago Malleable Castings Company, No. 2-B; the next, industrial switching at that plant. In determining per car industrial switching cost we divided the total by the total number of

cars, loads and empties. The next is the transfer of the empty from Chicago Malleable Castings Company back to the West Pullman yard (Tr. 1781), and there classified by the West Pullman engine. (Tr. 1782.) Our record does not show that we have a classification both at Irondale and West Pullman at that point in the index. The 1-B there, classification at West Pullman, is the transfer engine bringing [fol. 1061] the cars from West Pullman to Irondale, or vice versa. He lines up his long train, which is a transfer movement. The next is a transfer movement from West Pullman to the Illinois Central at Fordham, where we pick up cars from that road from Irondale. This car did not go to the Illinois Central at Fordham. It was en route to Irondale. (Tr. 1782.) The next is a transfer service from Illinois Central to the Pullman Railroad, where we pick up cars going to Irondale. The next, a transfer from Pullman Junction to Irondale, and there another classification and an interchange cost with the Indiana Harbor Belt. The other items, MA and MB, are trackage charges paid the Illinois Central and Rock Island for running over their rails. (Tr. 1783.) I do not know of any unusual cost developed on our railroad. We did not use every cost developed during the study period. We excluded a movement to the Hicknian-Williams plant in the test period that we did not have in 1926.

Cross-examination.

By Mr. Walter (Tr. 1783):

We have charged up in our account something like $18.00 per car for cleaning cars on the Chicago, West Pullman & Southern preceding the service of loading them with pig iron. We did not charge that to any switching movement. We put it in here in the cost study, that is, the detention. The cleaning of the car was not necessarily due to its previous loading or the failure of the shipper to take it out. On page 88 of Exhibit 83 is an explanation that I do not believe I could add anything to. (Tr. 1784.) The reason we charge the cleaning against this movement of pig iron when the previous movement might have been in road-haul is that the car is under demurrage as soon as it arrives in the yard and is placed on the track for cleaning. I would not say that although it was the failure of the previous

[fol. 1062] shipper to fully unload, we put the car under demurrage against the Wisconsin Steel Company, but did say that we put it on the track and it was under demurrage. (Tr. 1785.)

J. E. CRONIN sworn and testified as follows:

Direct examination.

By Mr. Davis (Tr. 1785):

Am statistician of the Chicago Short Line Railroad Company and worked with Mr. Feely in connection with the Chicago Short Line Railroad in the cost study, on the committee, and assisted in the assignment of the index numbers.

Cross-examination.

By Mr. Tholin:

Index DO-420 is a movement of an empty car from the Elgin, Joliet & Eastern moving out to the Belt Railway loaded. The first element, D-106, shows interchange with Belt Railway of Chicago at South Chicago yard (Tr. 1786), which is apparently an error and should be shown as an Elgin, Joliet & Eastern interchange point. Index No. D-0435 covers movement from Belt Railway to Baltimore & Ohio Chicago Terminal, where we received these cars empty from the Belt and loaded them at the By-Products Coke Corporation, and No. D-113 is our index for industrial switching at that plant, showing we moved those cars out of the By-Products Coke plant. Item C-13 covers interchange to the Indiana Harbor Belt at Burnham. The element of service there was misapplied. That should read C-14, and I believe is explained thoroughly in Exhibit 83 on page 51. (Tr. 1787.) We determine from our records the roads from which the cars were received or delivered to, and with the assistance of the operating representatives [fol. 1063] we assigned the elements; by assistance I mean the judgment of the operating officials, and I accepted it as the normal movement of traffic. (Tr. 1788.)

Mr. Slater: I would like to have about four or five of the railroads, the Illinois Northern, the Chicago Junction, the

Chicago Short Line, or any other railroads desiring so to do, to submit to us the total number of cars handled during the last year in each class of service for which they received revenue, whether empty or loaded, separated as to the class of service. For instance, industrial switching, single-line, for connecting line, empty movement, revenue traffic only. I have only designated two or three, but there are four, five or six different classifications that will be divided, but just the total number of the cars for the year. (Tr. 1789.)

Chairman Campbell: Why could it not be put in the shape of an exhibit, with the understanding that it will be filed within a certain length of time and that any party who desires to criticise it may have a certain limited time in which to do that? (Tr. 1790.)

Mr. Slater: That is agreeable.

Chairman Campbell: Is there any objection to that?

Mr. Walter: That seems to be all right from our standpoint.

Chairman Campbell: How long would that take, Mr. Davis?

Mr. Davis: Well, I do not know. There is quite a lot of work involved in that, but here is what I would like to do. I would like to have Mr. Slater and Mr. Tholin write us a letter specifying in detail as to what is wanted, so that we will make no mistake about it.

Mr. Slater: I will be glad to give it to you in detail.

Mr. Davis: And then we will try to get it as soon as we can, if it is possible at all to get it, and if it is not possible [fol. 1064] to get it we will advise Mr. Slater to that effect, but I think it is possible.

Mr. Slater: It is available.

Mr. Davis: If it is then we will furnish it just as soon as we can, in the shape of an exhibit. (Tr. 1790.)

Chairman Campbell: That should be done. How long will that take you?

Mr. Davis: We will have to run all our records for a year's business, and the best estimate these gentlemen give me offhand is two months.

Chairman Campbell: Well, you write your letter, Mr. Slater, and if it can be done Mr. Davis will do it as soon as possible, which would not necessarily delay the filing of the briefs.

Mr. Slater: No.

Mr. Davis: I do not think so.

Mr. Slater: Will that be made a part of the record in this case, Mr. Commissioner? (Tr. 1791.)

Chairman Campbell: Yes, I think it better be filed in the record, at any rate the same as the correspondence would be, so that it becomes a part of the record if anyone wants to refer to it.

Mr. Slater: Mr. Tholin thinks if the exhibit covers the business for every third month of the year it will be sufficient.

Chairman Campbell: Well, will it be every other month of every third month?

Mr. Slater: Every third month beginning with the month of January as the first month, and taking every third month.

Chairman Campbell: All right. (Tr. 1792.)

Mr. Walter: Taking page 116 of Exhibit 83, we ask that the carriers file a list of industries in the Chicago switching [fol. 1065] district where they own the sidetracks of the industry, together with the mileage in each industry, of all roads.

Chairman Campbell: That ought not to take much time.

Mr. Walter: Further, in connection with the following items: Exhibit 83, page 148, F-4a; page 52, F-4b; page 148, F-43; page 53, F-4; page 30, F-4c; page 54, F-4B; page 150, F-4j; page 55, F-4h; page 56, F-41; page 151, F-4j; page 152, F-41; page 111, D-3; page 34, D-4; and page 38, E-14, recite situations where there is a roundabout movement, and in connection with these items there are disputes—I give these merely as illustrative—due to the failure of the carriers to use the direct routes. I think it is important, in connection with this case, that the records show definitely whether we are right or whether the carriers are right. As the Commission has a bureau of service representative here, who knows Chicago territory, I request that he be directed to examine the situation (Tr. 1793) as to each of the particular situations, and others stated in Exhibit 83 along the same line, and make a report which will be embodied in this record. It may not help us; on the contrary it may hurt us; but I think the facts ought to be established of record, and therefore I request that he make a report and that such report be made a part of the record. (Tr. 1794.)

The purpose of such report is to settle the dispute as shown in Exhibit 83 between the railroads' position and the position of the shippers.

Chairman Campbell: Well, Mr. Walter, in making that request, do I understand that the gentleman you refer to is to be taken as an arbitrator of the facts, that his finding is to be binding upon the parties?

Mr. Walter: No, your Honor; it will be binding in so far [fol. 1066] as I am concerned. * * * We have set forth our position in this agreed document. There is a square dispute of facts, and I would like to have an experienced man make an investigation and a report, and am perfectly agreeable to having the carriers assign a man to make that investigation with him. (Tr. 1794-1795.)

What I had in mind was that this man would, on the ground, inspect the facilities, see whether there was a joint use where one was possible, and where there was not a joint use, why there was not such joint use; in other words, take this as illustrative and have the man go on the ground, make a report which would be used by the Commission in evidence just as this record is to be used in evidence. (Tr. 1795.)

Chairman Campbell: Is it your position, Mr. Walter, that if that be done, briefs will not be filed pending your investigation?

Mr. Walter: Well, yes, your Honor, but still there are some other matters that have got to be handled in the meantime that will delay the filing of briefs. (Tr. 1797-1798.)

Taking 4-A just as an illustration of a movement. The Indiana Harbor Belt has trackage rights over the Belt Railway to 40th Avenue yard of the North Western, crossing the Baltimore & Ohio Chicago Terminal near its 40th Avenue yard. That would form a much shorter route than via Barr yard, and we think with a little cooperation between carriers, it would save a lot of expense and a lot of time. A still shorter route is set forth therein, and we think it is important to the cost study to determine whether they have put in these long expensive routes when they had a much shorter route. (Tr. 1799.)

Chairman Campbell: I do not see, Mr. Walter, how that can be done without having a further hearing, and we have got to end this thing sometime.

Mr. Walter: That is true, Mr. Commissioner, but it ought [fol. 1067] not to be ended until it is ended right.

Mr. Davis: But that gets to the proposition, taking it by and large, of whether we should revamp the Chicago terminals and build them over again, and as if there was not anything here but having the knowledge that we now have. That is what it all amounts to. (Tr. 1799.)

Mr. Walter: Take the Indiana Harbor Belt, the Baltimore & Ohio, and the Belt Railway, and look at the duplication of service that could be avoided by coordination of these terminal roads, and put the Chicago Junction along with them. See what could be saved to the carriers and shippers. I think the Commission is coming to the point in switching matters where it ought to get all this duplication and expense out of the way (Tr. 1799), and this is the first case you have had where there is an opportunity to look exhaustively into the situation. It may lead ultimately to unification of terminals, and that might not be a bad thing for all of us. (Tr. 1800.)

Chairman Campbell: I do not see how that can be done, Mr. Walter, without our having a further hearing. I would not want an investigation of that sort made and then filed, and then have somebody say "We had no chance to answer that, and we had no chance to examine it." (Tr. 1800.) If we are going to do that we better have a hearing in Washington.

Mr. Walter: Very well.

Chairman Campbell: With the understanding that everything else is to be excluded excepting those exhibits.

Mr. Walter: All right.

Chairman Campbell: What do you say to that, Mr. Davis?

Mr. Davis: I do not think that will do at all, Mr. Chairman; I do not think we should do that. They have a theory as to whether there should be a consolidation of terminals [fol. 1068] in Chicago, that is what it gets back to, and that question is not here.

Chairman Campbell: My own thought is that we should not get into that sort of an investigation. That is not involved here. Now, as to whether or not these terminals should be revamped is a service matter. It may come to that in time, but not here yet. We should not bring these things. The Commission should be very careful not to bring things beyond what the intention was when the in-

vestigation began. I think I shall have to refuse the request at this time. (Tr. 1801.) I think the only way that should be dealt with, if at all, would have to be by a petition filed with the Commission with a view of having such an investigation made independently. I do not believe it is here in this case.

Mr. Slater: I do not assume that Mr. Walter would want a different record in the Illinois case than in the interstate case.

Mr. Walter: No, I would not. But I think there is a failure to apprehend what I am asking for. Here is a statement of costs. In the case of the items I have read into the record is a square challenge of the correctness of the carriers' statements that that is the normal and proper method of handling traffic. It is certainly not the proper method of handling the traffic. Of course the burden is on them, and here is a square conflict. We are taking one position and they are taking another position. All I am trying to do is to get the conflict removed, and shall ask that, the burden being on them, and there being a square conflict, they have not sustained the burden. But it does seem to me that here would be a good time, when the carriers for road-haul purposes have made a certain arrangement (Tr. 1802), and they handle traffic in a certain manner, to take care of road-[fol. 1069] haul business, and the purpose of the arrangements being to get road-haul business—I say, here is a good time to have an authoritative determination by the two regulatory bodies whether it would be better for carriers and better for shippers if certain trackage rights were utilized and if certain connections which are now feasible and open were actually utilized for the movement of freight. (Tr. 1803.)

Chairman Campbell: I think, Mr. Walter, the question is not before us. You have a perfect right to argue that point in your briefs, and in that way criticise the cost study of the carriers, but that is a service matter, as I said before, which I certainly do not want to go into in this case. (Tr. 1803.) * * * I think, Mr. Walter, I shall have to refuse your request. (Tr. 1805.)

Mr. Connell: Mr. Chairman, while we are waiting, I would like to clear up a printer's error on page 27 of Mr. Galligan's Exhibit 85, in the middle of the page. (Tr. 1805.) It shows via M. C. from Kensington and Hammond,

via various routes. It is all right as far as from Kensington via Illinois Central, but the next should read, "Kensington via Pullman Railroad, $6.30 and $9.00," then there should be a line. The next should read, "Baltimore & Ohio Chicago Terminal via Gibson yard and Indiana Harbor Belt, $15.50 and $14.50." Then there should be another line. The next item should read, "Baltimore & Ohio Chicago Terminal via Kensington and Belt Railroad, $12.50 and $13.00," and then another line. The next item should read, "Indiana Harbor, New York Central, Illinois Division, via Gibson direct, $9.00 and $8.10," and another line. The last item is "Chicago River & Indiana via Union Stock yards, $7.13, and $13.00."

Chairman Campbell: The correction may be made. (Tr. 1806-1807.)

[fol. 1070] G. W. Oliver, recalled, testified as follows:

Direct examination.

By Mr. Walter:

Am the same Oliver who testified previously. Since the receipt of Exhibits 7-A and 11-A have tried to identify some of the excepted rates which are now below the Lowrey basis and which are proposed to be increased to the Lowrey level, with the statistical information shown in Exhibits 11-A and 7-A. (Tr. 1807.) Referring to the pig iron rate from Federal Furnace Company to the Interstate Iron & Steel Company, a single-line Illinois intrastate haul, the cost for cars moving under this rate was included on page 11 of Exhibit 7-A. Approximately 23 cars were included in the study for that movement. Page 11 shows total of 56 cars of pig iron were included in the cost study, moving at rates less than Lowrey tariff intrastate Illinois, which they propose to raise approximately 1 cent per hundred pounds. (Tr. 1808.) The cost per car shown by the railroads is $12.36, while present revenue is $19.56 per car, reflecting an operating ratio of 63 per cent. This is an average for pig iron, in addition to shipments from the Federal Furnace Company to the Interstate Iron & Steel Company. The record in this case indicates that the cost for this particular pig iron is less than the cost shown on page 11. There was a large movement from the Federal

Furnace Company to the Interstate Iron & Steel Company which moved by the Pennsylvania. These cars were not included in the cost study (Tr. 1808), but shown on page 20 of Exhibit No. 11-A, being included with an 89-car item for pig iron shown on the sheet. The costs are not given for these cars, since Exhibit No. 11-A only shows traffic statistics. Page 20, Exhibit No. 11-A, shows number of [fol. 1071] commodities proposed to raise up to the full Lowrey basis. These cars were not included in the cost study. Page 8, Exhibit No. 11-A, shows corresponding information, that is cars moving intrastate Illinois at less than Lowrey tariff, which it is proposed to raise to the Lowrey tariff, which are included in the cost study.

Page 8 shows 541 cars of clay, gravel, sand and stone were studied, and which will be increased to the full Lowrey basis; page 20 are 935 to be raised to the full Lowrey basis which were not studied. (Tr. 1809.)

Page 8, Exhibit 7-A, shows that costs per car for the 541 which were studied, as compiled by the railroads, were $15.78 per car, with present revenue $20.46 per car, reflecting an operating ratio of 77 per cent. This information is being used as justification for increasing the rate on 935 cars not studied. Again contrasting page 8 with page 20, it will be noted that on the latter it is proposed to increase rates on fresh meats and other packing house products to the full Lowrey basis (Tr. 1810); but page 8 shows that cost studies were not made on any of these cars, so that no information is available for testing the proposed increases on these two commodities. The same is true as to 89 cars of pig iron shown on page 20, no cost figures being available for that pig iron and for 70 cars of iron and steel, 21 cars of ice and 96 cars miscellaneous freight shown in the last line of page 20. (Tr. 1810.)

Miscellaneous group No. 69, page 9, Exhibit 7-A, shows total cost for this group as $17.18 per car (Tr. 1810); present revenue $13.17 per car cost being in excess of the revenue. The miscellaneous group includes various commodities. The more important included are ashes, cinders, scrap iron, refuse and coal tar, though I do not know that any of that moved Indiana intrastate. (Tr. 1811.) The [fol. 1072] costs shown are at least not representative of scrap iron as a commodity. I have information showing revenues per car for pig iron moving intrastate Indiana

from one of the shippers, approximately $20.00 per car, which compared with cost of $17.18 claimed by carriers, depicts a totally different situation from that shown for the general average for the miscellaneous groups. (Tr. 1811.) There are a number of other excepted rates which are to be increased, and some which are not to be, which were not included in the cost study and no costs are shown. Such further analysis as we will want to make of these exhibits will have to be deferred until the brief has been prepared. The only way the costs for these excepted commodities could be obtained would be by reference to the working papers of the railroad. (Tr. 1811.)

As to car repairs, Mr. Saur contends that the day basis is as fair as any for the purpose of determining them. The position of the shippers is outlined on pages 263 to 269 of the transcript and also on page 168 of Exhibit 83. Mr. Rummel's claim that more cars are damaged in terminals than on the road means little unless something is known of the relative amount of the time of cars in the terminals, on the road, and also unless something is known as to the number of cars which were not damaged. It appears from Mr. Rummel's testimony that a very small percentage of cars handled in terminals are damaged in connection with switching operations. (Tr. 1812.) Very complete and reliable information could be secured on the effect of switching upon car repairs by reference to the repair accounts of the switching railroads which operate in the Chicago switching district. (Tr. 1813.)

Exhibit 96 shows freight train car repairs for 8 switching railroads in the Chicago district for the year 1926, [fol. 1073-] amounting to $617,695.00, including not only repairs to cars owned or leased by these railroads for which the owner is responsible, but also repairs to foreign cars for which these 8 particular railroads are responsible. The annual reports of the Interstate Commerce Commisssion show these 8 railroads handled 2,642,284 cars of revenue freight in the year 1926. Dividing the repair expenses by this figure produced an average of 23 cents per car handled, which reflects not only the amount per car resulting from switching damage, but also the amount due to the ownership of a certain number of cars. These particular railroads, on December 31, 1926, owned or leased 2,686 cars for which owners' repairs would amount to a rather substantial sum and would tend to reduce the 23-cent per car

figure. (Tr. 1813.) As previously stated, a new allowance for this situation would produce a figure amounting to about 15 cents per car handled. That to my mind shows the kind of repairs testified to by Mr. Rummel are not of importance. I do not think repairs of that character can be measured by the time basis, or that the other kind of repairs, which relate to mileage made by the car and to other causes resulting from the use of the car, can be measured by it. (Tr. 1814.) Illustrating this is the very small percentage of time assigned to cars in the switching district representing time when a car is actually being moved or being switched. Mr. Saur states that mileage in switching movements could not be computed or ascertained. This is correct unless done by putting a cyclometer on every one of the cars. I believe that an outside figure can be estimated which can be safely figured. The railroad exhibits show average haul on single line is about 12 miles. If we assume 100 per cent empty haul, that would add 12 miles, making 24. Then, some allowance should be made for the fact that there are more or less back hauls in connection [fol. 1074] with getting cars from an industry to the base yard and in mileage around the yard, (Tr. 1814) from one part of the yard to another and in shunting cars back and forth in connection with flat switching. 12 miles for this service would be an outside average and would produce 36 miles which a single line car might make in connection with a single line movement. The usual average allowed for locomotives in switching service is 6 miles per hour and might be taken as typical of time spent in which these cars would move in switching service. This would produce an average of 6 hours per shipment or one fourth of a day. Total days detention assigned by the railroads to single line hauls is 6.6 days. The mileage equated into hours is about 4% of total time assigned by railroads to single line hauls. In other words, the car is standing still 96% of the time and moving about 4 per cent. Another calculation is to divide the 36 miles estimated as maximum mileage by 6.6 days detention which produced miles per day of 5½. This may be compared with the average for the traffic including road haul movements and terminal movements of about 30 miles per day. (Tr. 1815.) On any basis which carries into terminal operations where cars make only 5½ miles per day, and where they stand still

96% of the time, an average car detention cost of 64¢ per day based upon a much higher percentage of moving time and upon 30 miles per car day, is absolutely wrong. I do not think car time can be taken as a measure of car repairs and applied to the number of days detailed any more than mileage can be taken and applied to the miles per day moved in terminal service. By that, I mean to take average repairs per car mile and assume that cars moving in terminal service have their cost. I think that would produce a cost that is far too low. Likewise, I think the use of the time basis produces a cost that is too high. I be-[fol. 1075] lieve that any basis that might be adopted should consider both time and mileage and damage to cars in switching operations and all other factors. I previously submitted a basis taking in account all these factors and including an allowance for switching damage which Mr. Saur and Mr. Rummell claim is important, based upon operations of these switching railroads. The results I have worked out there are far more accurate than the time basis produced and it is certainly a much more conservative method than that used by the carriers. (Tr. 1816.) The railroads considered my method on page 171 of Exhibit 83 on the ground that the method was based on certain assumptions and upon an investigation made by the mechanical committee of the American Railway Engineering Association, which committee developed a formula showing the amount of car repairs attributable to use and those not affected by use. The railroads claim these processes are full of arbitrary exceptions, nevertheless, I believe each step that I have taken where I have not relied upon the experience of mechanical experts is conservative and does result in a more reasonable charge than that worked up by the railroad. The railroad plan of using car time for determining car repairs is really a single grand assumption and I think is a much more defective method than to analyze and to adopt a number of conservative assumptions in each step. (Tr. 1817.) In Little Rock switching case 140, I. C. C., 533, the carriers presented cost studies in which repair costs measured by damage to cars while switched in the terminal were distributed to various classes of switching service on the car day basis and the Commission considered this plan and disposed of it as not being a proper method. The Commission found that

the principal damage to a car in terminals was in classification and Mr. Rummell confirms this view. (Tr. 1817.) [fol. 1076] The cost studies presented show that Chicago switching district traffic is a much lower percentage of classification service than all switching traffic. Page 43 of Exhibit 13 shows 36.6% of total engine hours for all switching services are in classification work while of the total engine hours assigned to switching district traffic, only 20.4% are for classification time. It seems to me this point alone is enough to dispose of the propriety of the use of the car day basis for determining car repairs. This question is one of the most important points in dispute between the various parties to this case and is one reason why I have taken so long on this subject. (Tr. 1818.)

Mr. Davis: Mr. Vivian made a statement which he used when he introduced Exhibit- 8-A, 11-A and 11-B and Mr. Oliver and Mr. Walter thought it would be well to introduce it in evidence which we offer as Exhibit No. 97. It was received in evidence marked, "Exhibit 97, Witness Vivian." (Tr. 1819.)

We offer in rebuttal of Exhibit 96, introduced by the Illinois Commerce Commission, our Exhibit 98, which was thereupon received in evidence, marked "Exhibit No. 98." (Tr. 1819.)

E. F. Sauer, recalled, testified as follows:

Direct examination.

By Mr. Davis:

The notice issued by the Interstate Commerce Commission October 25, 1926, contains data to be furnished by carriers and paragraph "G" requests that cost data be submitted. The cost data committee was created of representatives from the Pennsylvania, the Baltimore & Ohio, the Big 4, Erie, Chicago & Northwestern, Chicago, Milwaukee, St. Paul & Pacific, Belt Railway, and the Elgin, Joliet and Eastern, but since cost data collected during winter operations could not be considered as representative, [fol. 1077] the action of this committee was directed to supplying other statistical data called for in the notice and at a hearing in Chicago on February 15, 1927, 2 exhibits

were offered by Chairman Galligan, numbered 1 and 2. (Tr. 1820.) These statistics resulted from an analysis of carload traffic having both point of origin and destination in the Chicago district moving over all railroads in that district during September, 1926. (Tr. 1820.) These exhibits were reintroduced at the hearing on May 15, 1928, and numbered 9 and 10. On May 25, 1927, the Interstate Commerce Commission requested that cost data be submitted and that exhibits 1 and 2 above mentioned be restated by commodities. (Tr. 1820.) On July 19, 1927, the Commission by notice indicated the character and scope of the cost study to be made in which cost studies were requested on the following roads: Indiana Harbor Belt; Baltimore & Ohio Chicago Terminal; Elgin, Joliet & Eastern; Belt Railroad; Chicago and Northwestern; Pennsylvania; Chicago, Burlington & Quincy and the Chicago, Milwaukee, St. Paul & Pacific. Exhibits 1 and 2 previously referred to only included iron and steel articles on the Elgin, Joliet & Eastern railroad and Chairman Campbell verbally requested that in the cost study to be conducted and in the restatement of the traffic analysis other commodities handled by the Elgin, Joliet & Eastern should be included. On October 29, 1927, the Interstate Commerce Commission by notice provided for additional cost studies on the following railroads, Illinois Central; Chicago, Rock Island & Pacific; Chicago Short Line; Chicago & Illinois Western; Chicago West Pullman & Southern; Illinois Northern and Pullman Railroad, making a total of 15 roads on which the cost study was conducted, in June, August and October, 1927. At the second hearing on January 15, 1928, held in Chicago, the carriers introduced 5 Exhibits covering only the basic data used in the cost study. At the 3rd hearing herein, May 15, [fol. 1078] 1928, the carriers submitted Exhibit No. 7, showing result of cost studies as applied to switching in the Chicago District, Exhibit 8 showing cost of switching between Chicago and Chicago Heights and Exhibit 11 being restatement of the original traffic analysis shown in Exhibits 1 and 2 previously referred to and which were reintroduced at this hearing numbered 9 and 10. During the conduct of the studies in August and October, covering 12 out of the 15 railroads, the Burlington, Chicago and Northwestern and Chicago, Milwaukee, St. Paul & Pacific studies having been conducted in June, 1927, an observer was

present, representing the Interstate Commerce Commission and also an observer representing Chicago shippers. As a result of an understanding at the hearing beginning on May 15, 1928, joint conferences of representatives of carriers, shippers and the Commissions were held to iron out as far as possible the differences complained of and at the hearing announced September 18, 1928, was presented a concise statement embodying the shippers' position, (Tr. 1822) and the position of the carriers together with the position taken by representatives of the Illinois Commerce Commission and the Public Service Commission of Indiana, and pursuant to requests, Exhibits 7, 8 and 11 were restated to show traffic moving on the Lowrey basis of rates, those below the Lowrey and those above and further subdivided between interstate traffic, intrastate Indiana and intrastate Illinois traffic. The restatement of the Exhibits last referred to has been introduced as Exhibits 7-A, 8-A, 11-A and 11-B. 108 specific allegations were offered by shippers' representatives and from the transcript of testimony some 20 additional allegations were developed and the result of the numerous joint conferences referred to, are imbodied in Exhibit No. 83. The Exhibit shows that of the total number of allegations, 74.3 per cent resulted in agreements; of which 72 per cent were statements [fol. 1079] of fact and 2.3% statements of principle. (Tr. 1823.) Included in the statement of facts 69 allegations or 54% of the total were those including allegations which had little or no affect, those which were satisfactorily answered, abnormal costs and alleged errors which were fully explained and allegations relating to operating practice some of which contained statements which shippers' representatives were not in a position to affirm or deny, so that in a general way, it may be said that 54% of the allegations might have been omitted without seriously impairing the study as a whole, 25.7 per cent of the allegations resulted in disagreements of which 21.9 per cent related to statements of fact. Out of the 128 allegations with respect to 86 cases or 67 per cent, the Illinois Commerce Commission noted "no comments". The Public Service Commission of Indiana had a representative present at only 3 sessions and it was agreed that the position of that commission would be the same as that taken by the Illinois Commerce Commission unless some different specific reply was offered, which was

not done in any case. (Tr. 1824.) The Illinois Commerce Commission presented separately 18 allegations considered at the 20th joint conference and disposed of, and the results of those deliberations were embodied in Exhibit 84. All of the allegations involving monetary results, 20 in number, 10 of which were of relatively minor importance, were conceded to have been the result of clerical errors on the part of the carriers and when the fact is taken into consideration that costs were set up on some 26,000 cars, this percentage of errors is certainly insignificant. The real difference of consequences are embodied in 10 of the 128 allegations. The analysis necessary to be made by the carriers to prepare for these joint conferences showed [fol. 1080] the net understatement in Exhibit No. 7 amounted to $28,879.97 which separated between 1, 2 and 3 line hauls and on the basis of an operating ratio of 67.4 per cent justifies rates respectively of 2.97¢, 3.66¢ and 4.41¢; of the 10 allegations involving understatements on part of the carriers, 3 of them were agreed to in principle by the shippers representatives although no agreement could be reached as to the amount involved and it is the position of carriers that these 3 items aggregate $45,000 or approximately the 10 per cent estimated in the statement in the carriers offered at the May hearing. (Tr. 1825.)

It is the position of carriers that in the other 7 allegations in which over statements are claimed by shippers that the claims are purely theoretical and have not been supported by substantial evidence.

It is the further position of the carriers that the cost study committee would gladly welcome any real constructive criticism of the formula used but it is its opinion and particularly of the experienced cost accountants that the evidence offered at the joint conference constituted no reasonable basis for making fundamental changes in the formula as it now exists. (Tr. 1826.)

Cross-examination.

By Mr. Walter:

In stating the claims of the carriers as to the amounts of money in the understatement, I included only the carriers, and no computation as to the shippers has been made.

We claim that the shippers representative has not substantiated their claims in our opinion and we claim that we have, (Tr. 1926) and that is all set forth in Exhibit 83. I am not merely reiterating our position as set forth in that exhibit but what I am trying to do is to make somewhat of a brief summary not only of this hearing, but of the case since our cost study committee has come in contact with it.

[fol. 1081] Chairman Campbell: It really, as I understand it is a statement virtually as to what the contention of the carriers will be in their brief and for the purpose of clearly setting out the claim of the carriers.

Mr. Davis: That was the purpose. (Tr. 1827.)

Cross-examination.

By Mr. Tholin:

Referring to Exhibit 98, the detention as originally recorded in the working pages of carriers is set up by ours, and included in the group called 1 day, that is, that day's car detention is set up in the Exhibit. What this is intended to show is the number of cost study cars that were involved. In the item called 1 day, I do not recall just how the hours were converted into days. (Tr. 1828.)

M. R. Vivian, recalled, testified as follows:

Cross-examination.

By Mr. Tholin:

The 1 day happens to be a 24 hour period but if there is any break there would naturally be the fraction of a day. Everything was carried in hours and converted into days and hours and based on 24 hours. If a car was involved for 24 hours, that is not included. The other hour being less than half, it would probably be dropped and would be called 1 day and on up to 35, it depends on how they would add up and the disposition of the fractions. (Tr. 1829.)

Colloquy.

Chairman Campbell: Are there any more witnesses to be presented?

Mr. Davis: No, sir. That closes our case. And as stated in the former hearing about keeping these tariffs under suspension, it is the purpose of the carriers to keep them under suspension until this matter can be disposed of, both as to intrastate and interstate. And that will include [fol. 1082] the individual lines as it did before. (Tr. 1830.)

Mr. Keene: Mr. Chairman, before we get to the matter of briefs, I want to request that Mr. Davis have Mr. Vivian furnish under commodity group 66 on pages 7, 8 and 9 of Exhibit 7-A the particular commodities included.

Chairman Campbell: Can that readily be done, Mr. Davis?

Mr. Davis: I think so if they do not ask too many things.

Chairman Campbell: We will not allow too many things. That will be done then in a reasonable time. I assume there is no necessity for fixing a time for that. It will be done as quickly as possible.

Mr. Davis: If that has not already been furnished, we will furnish it.

Mr. Keene: If Mr. Vivian says the commodity in that particular place in Exhibit 7-A is the same as to which he furnished me the information that will be sufficient—if he will announce that that is the same commodity. (Tr. 1831.)

Chairman Campbell: Briefs will be due on December 15. (Tr. 1832.)

Mr. Slater: Just 1 statement; the notice issued by the Interstate Commerce Commission showing the time and place of hearing has been accepted as notice in the Illinois case. Now that there may be no claim made that the record is not properly before the Commission, I would be very pleased if the parties to this case would stipulate at this time that the record made in this hearing shall be the record in the Illinois case before the Illinois Commission.

[fol. 1083] Mr. Walter: That is stipulated by the representatives of the shippers.

Mr. Davis: And by the carriers.

Chairman Campbell: Then with the exception of the requests made by Mr. Slater and Mr. Keene, the record in this case is closed, at 12:30 P. M., September 21, 1928. (Tr. 1833.)

(Pages 1834 to 2125, inclusive, of the record in the above entitled proceedings covers the transcript of the oral argu-

ment of counsel in said cause before the Interstate Commerce Commission held at Washington, D. C., December 3 and 4, 1930; and that portion of the transcript is not abstracted. Abstractor.)

At Chicago, Illinois, a further hearing before the Interstate Commerce Commission, in Docket No. 19,610, involving switching rates in the Chicago district, was held at Chicago, Illinois, May 2, 1932, at 10 o'clock A. M., before Howard C. Faul, W. B. Wilbur, Examiners of the Commission pursuant to the Commission's order therefore and the following proceedings were had. (Tr. 2126.)

Examiner Faul: The Interstate Commerce Commission has assigned for further hearing today, Docket No. 19610, switching rates in the Chicago District, but only with respect to the relation of the rates and charges for switching intrastate commerce to the rates and charges prescribed for like switching in interstate commerce, for the purpose of determining whether the adjustment of the interstate rates and charges and the intrastate rates and charges, is [fol. 1084] unduly prejudicial to interstate shippers and traffic and unjustly preferential of intrastate shippers or traffic or unjustly discriminatory against interstate commerce.

The complaint in Docket 24950, the Acme Steel Co., et al., vs. Atchison, Topeka & Santa Fe Railway Co., will be heard at the conclusion of the further hearing in this case, No. 19,610. (Tr. 2134.)

Mr. Walter: If the Examiner please, I think we ought to have the record that is made in the present case that is Docket 19610 also a part of the record in the other case or in other words have the two matters heard on the same record.

Mr. Davis: We object to that. (Tr. 2134.)

Examiner Faul: To what extent are the issues the same in the 2 cases, Mr. Walter.

Mr. Walter: The primary question is what is the lawful switching rate to be applied within the Chicago Switching District. That is involved in 24950. After you have determined the interstate level, the next question is what does Section 3 require, we have the same parties, the same railroad tracks, the same movement, differing only as between points within the district.

Examiner Faul: But the reasonableness of the interstate rates have already been determined.

Mr. Walter: Yes, determined 5 years ago. We are now dealing with the situation today and the decision of the Commission cannot be based upon a record that is so old. We had the last testimony taken in 1928 and it dealt with a cost study of 1927 and the traffic study of 1926, and while the Commission declined to reopen the case on all questions involved, we now have a situation that must be determined not only Section 3 but Section 1. (Tr. 2140.)

[fol. 1085] Examiner Faul: Mr. Walter, you made the same argument in your recent petition to the Commission for a rehearing and to bring the record down to date and that petition or those petitions were denied.

Mr. Walter: That is right. * * * What I am insisting upon, however, is that taking into consideration the convenience of the parties and the economies of the matter, the simplified procedure and the unbroken precedent of the Commission, that the testimony be made a part of the record for use in either case. (Tr. 2142.)

Mr. Davis: Is it not true, Mr. Walter that what you want is that you can in your formal complaint case refer to any of the evidence or exhibits in this 19610 case and that in the 19,610 case the 13th section case, you can refer to any of the testimony or exhibits present in the formal complaint case.

Mr. Walter: To the same extent as if offered in the particular case. That is all I want.

Examiner Faul: But only so far as it covers the same issue.

Mr. Walter: Surely, in so far as it bears upon the issues. In other words, that in 24950 the evidence in 19610 be considered only insofar as it bears upon the reasonableness of the rates and that the evidence in 24950 be considered in 19610 only as it bears upon the question at issue in this case 19610.

Examiner Faul: We will proceed with that understanding and if Mr. Davis has any objection when the question comes up, we will rule on it at the time in the 19610 case. (Tr. 2150.)

Mr. Ames: If the Examiner please, you have limited the issues in 19610 as I understand to a question of relationship as between the intrastate rates and the interstate rates.

[fol. 1086] Examiner Faul: To the question of the relationship between the interstate rates and the intrastate rates under Section 13 issue.

Mr. Ames: Is the question of the measure of the state rates as such an open question under your rule.

Examiner Faul: I understand that in any section 13 case you can show that the intrastate rates are reasonable maximum rates. (Tr. 2153.)

G. F. Vivian, duly sworn, testified as follows:

Direct examination.

By Mr. Davis:

Am statistician of the Chicago, Milwaukee, St. Paul & Pacific Railroad Company, representing the Chicago district railroads in this proceeding. I appeared at the hearing in the original case, Docket 19610, introducing several exhibits, and have prepared several exhibits to be introduced at this time, which were prepared under my supervision and direction and for which I vouch. Of the two exhibits distributed on April 18th one is a restatement of Exhibit No. 11 A, which we ask be identified as Exhibit No. 99; and the second shows on its face to be a restatement of Exhibit No. 11 B, marked Exhibit No. 100, offered at this time subject to objection. (Said documents received in evidence and marked "Exhibits Nos. 99 and 100, respectively, Witness Vivian.") (Tr. 2158 2159.)

Exhibit 11 A introduced in the original case was a detailed analysis of traffic moving in September, 1926, in the Chicago district in carloads, and showed the present and proposed revenue by commodities, separated as between the various rate adjustments, the present Lowrey, proposed Lowrey, present over Lowrey, etc. (Tr. 2159.) For the purpose of this hearing I have made a recapitula[fol. 1087] tion of the one, two and three-line hauls, separating or maintaining the separation by commodities, but consolidating all the various rate adjustment details. Will present the intrastate Illinois and the intrastate Indiana traffic separately, further separating them between one, two and three-line hauls. The details in this exhibit

from pages 2 to 8, inclusive, are the same as the details shown in the original Exhibit 11-A, in so far as column headings are concerned and the commodity groups. The classification of commodities used in this exhibit is the same as that used in Exhibit 11-A, even though the railroads are operating under a new classification of commodities.

Page 1 of the exhibit recapitulates the details of pages 2 to 8, the totals being traced back to each page. The lower box shows net loss due to refusal of state commissions to permit present interstate rates to become effective on intrastate traffic. September was considered as 1-12 of the year, and the estimated loss prepared on that basis. This loss as to Illinois intrastate (Tr. 2160) traffic is $1,927,000, Indiana intrastate $117,000, or a total of $2,045,000 as estimated annual loss to carriers in the Chicago switching district. This is predicated entirely upon the traffic of September, 1926, which was the basis of the traffic study in Exhibit 11-A. (Tr. 2161.) Exhibit 11-B in the original case was similar to Exhibit 11-A, except that it covered the traffic between Chicago and Chicago Heights, and Exhibit 100 is a restatement. The recapitulation of Exhibit 100 has been carried through in similar manner to Exhibit 99, and the loss prepared on the same basis. The loss on Illinois intrastate on an annual basis, based on traffic moving in September, 1926, is $129,000. (Tr. 2161.)

The basis of the figures in these two exhibits just explained is to be found in the exhibits to which I have made [fol. 1088] reference and which have been distributed in 19610. In ascertaining whether traffic was moving with the same regularity in volume in 1931 and 1932 we selected the second week of November, 1931, and the second week of January, 1932, one period prior to the effective date of the interstate rates and the other period subsequent thereto. We selected the January period rather than December to avoid holiday accumulations that might occur. A week rather than a month's study was deemed sufficient in each instance, in order to reduce as much as possible the cost of compilation. The November period selected was prior to the effective dates of the rates prescribed for interstate application in Docket 19610 (Tr. 2162), and the January

period was after the interstate rates in that docket had become effective.

Have prepared an exhibit showing result of week's movement from November 9th to 15th within the district proper, marked as Exhibit 101, offered at this time subject to objection. (Said document was received in evidence, marked "Exhibit No. 101, Witness Vivian.") (Tr. 2163.) Exhibit 101 shows in detail in a similar manner to Exhibits 11 A and 99 the details (Tr. 2163) of traffic moving intrastate, both Illinois and Indiana, under the rates of those two states, showing the tariff basis under which it moved or the rate groupings; as an illustration, page 3 shows one line intrastate Illinois, present Lowrey, proposed Lowrey; while page 4 shows present over Lowrey, proposed Lowrey. Where no movement occurred we have inserted pages so marked, rather than leave out any reference and thus cause confusion. On page 1 is recapitulation of these details, while loss is indicated in the lower block. For Illinois one, two and three line hauls combined indicates loss of $947,600 per annum, and in Indiana $69,950, total $1,017,600. We allocated this on the annual basis stated, upon [fol. 1089] an analysis of all cars handled in the district in 1931, and a comparison of that week to the cars handled in 1931, and that percentage was applied to a week's figures of loss to determine the annual loss during 1931. (Tr. 2164.)

The difference in the figures in Exhibit 99, basing loss upon the movement in September, 1926, and the figures shown on page 1 of Exhibit 101, is due primarily to the general falling off of business. (Tr. 2164-2165.)

Exhibit No. 102 covers Chicago Heights Chicago district business, offered subject to objection. (Said document was received in evidence, marked "Exhibit No. 102, Witness Vivian.") (Tr. 2165.) Exhibit 102 was prepared in similar manner for the test period November 9th to 15th, representing traffic moving between Chicago and Chicago Heights, Illinois. Pages 2 to 16, inclusive, show details, with recapitulation on page 1. The lower block shows loss due to refusal of Illinois Commerce Commission to permit interstate rates to become effective on intrastate traffic, amounting to $46,152 for the year, prepared on a similar basis to that described for Exhibit 101 as to annual loss. (Tr. 2165.)

Have prepared two exhibits similar to those just described, covering the week of January 11th to 17th, 1932, after the interstate rates became effective on interstate traffic, but not effective on state traffic. (Tr. 2165.)

The first one deals with the district, is marked Exhibit 103, and is offered subject to objection. (Said document received in evidence, marked "Exhibit No. 103, Witness Vivian.") (Tr. 2166.) Exhibit 103 was prepared in similar manner, with an identical setup to that used for Exhibit 101. The week's business has been allocated to a year's business on the same principle used in Exhibits 101 and [fol. 1090] 102. We used the cars handled in 1931 rather than to include any period of 1932, so it is a comparison of the week January 11th to 17th with the volume of business handled in 1931, and showing loss on intrastate Illinois traffic of $899,000, and on intrastate Indiana traffic of $82,500, total $981,600. These are statements in round figures, and am not reading the fractions. (Tr. 2166-2167.)

Exhibit 101 shows traffic of the Chicago switching district moving in the week November 9th to 15th, and is the traffic that moved in that month and the shipments actually moved in the period covered by the exhibits. (Tr. 2167.) In allocating the week's business January 11 to 17, 1932, to an annual basis, we used 1931 in both Exhibits 101 and 103, so far as the year was concerned, to relate the week to the year. Exhibit 103 covers cars actually moved in January, 1932. The traffic in November, 1931, was less than in September, 1926, while January, 1932, was still smaller than November, 1931. (Tr. 2168-2169.)

Exhibit 99 shows loss based on 1926 is over $2,000,000, and in 101 the loss is $1,000,000-plus, while Exhibit 103 shows loss is less than $1,000,000, and that is due entirely to the lesser tonnage.

My next exhibit, 104, is offered subject to objection. (Said document received in evidence, marked "Exhibit No. 104, Witness Vivian.") (Tr. 2170.) Exhibit 104 is of similar character to Exhibit 102, but covers traffic moving during the week of January 11th to 17th, inclusive, 1932, between Chicago and Chicago Heights, and shows the estimated loss, prepared on basis similar to that previously described, approximates $58,000. (Tr. 2170.)

[fol. 1091] I have prepared another exhibit to ascertain whether or not there has been any change in the traffic

that can be attributable to the difference in rates, which is marked Exhibit No. 105 and offered subject to objection. (Tr. 2170-2171.)

Mr. Walter: If the Examiner please, I assume that objection to all of these exhibits can be considered as held in abeyance until we have had a chance to see a little more about what they are, and particularly as to this one exhibit, as to its dissimilarity.

Examiner Faul: Certainly; you will be given an opportunity to present any objections that you have to these exhibits.

(Said document received in evidence and marked "Exhibit No. 105, Witness Vivian.") (Tr. 2171.)

The Witness: On pages 4 to 33, Exhibit 105, are the details by rate groups and commodities, showing cars, tons and revenue prior and subsequent to December 10, 1931, together with appropriate averages, with recapitulation for the two tests on pages 2 and 3. In addition to the details on pages 2 and 3 are shown the percentages to the total for each of the types of traffic, that is, intrastate Illinois and intrastate Indiana, the total of the two, the interstate, and the grand total. The details shown on pages 4 to 33 are interstate details not previously reported in any of the preceding exhibits, the preceding exhibits in all cases showing details of intrastate traffic and the percentages of these two recapitulations on pages 2 and 3 have been charted and shown on page 1. (Tr. 2172.)

Taking page 1 under the heading Cars, for the November period, 1931, is 37.59; and for January, 1932, the figure is 41.26 (Tr. 2172), which are figures showing the percentages of the total of all traffic, one-, two- and three-line hauls combined, moving intrastate so far as number of [fol. 1092] cars is concerned during the two study periods November 9th to 15th and January 11th to 17th, and indicate that a larger number of cars moved Illinois intrastate than moved in November, that is, a larger proportion of the total volume; and that is true regarding block shown under the heading "Tons." In similar manner the percentages on Indiana intrastate in cars and also in tons is shown. The cars increased from 7.47 per cent to 7.99 per cent from November to January. The total intrastate shows increase in cars from 45.6 per cent in November, 1931, to 49.25 per cent in January, 1932.

This has then been compared with the interstate proportionate volume in the two periods. The November study shows interstate 54.94 per cent of total, while January decreased to 50.75 per cent. (Tr. 2173.) In similar manner the tons for total intrastate indicate increase from 42.01 per cent in November, 1931, to 46.63 per cent in January, 1932, with corresponding decrease in tons interstate from 57.99 to 53.37. The details for one-, two- and three-line hauls are shown. The one-line haul shows a slightly reverse situation in Illinois intrastate, with slight increase in interstate, but the two- and three-line hauls, the latter in particular, show material falling off in interstate and a proportionate increase in intrastate business, both in cars and tons. The percentages used in all cases are those reflected on pages 2 and 3 of this exhibit.

The exhibit covering the Chicago Heights movement is 106, offered subject to objection. (Said document received in evidence, marked "Exhibit No. 106, Witness Vivian.") (Tr. 2174.) Exhibit 106 was prepared in the same manner as 105. (Tr. 2174.) The details in the latter part of it, pages 4 to 33, inclusive, being the interstate traffic, while [fol. 1093] the recapitulation of the two periods are shown on pages 2 and 3. The chart on page 1 shows considerable increase in intrastate Illinois traffic, both in cars and tons, the cars running from 51.52 per cent in November, 1931, to 69.32 per cent in January, 1932; while interstate traffic dropped from 48.48 per cent in November, 1931, to 30.68 per cent in January, 1932. The two- and three-line hauls reflect similar conditions. There were no four-line hauls interstate.

Have prepared an exhibit of selected data by operating expenses, showing operating ratios, taxes, cars handled, and appropriate averages by year, for the period 1928 to 1931, both inclusive, marked Exhibit No. 107, offered in evidence subject to objection. (Said document received in evidence, marked "Exhibit No. 107, Witness Vivian.") (Tr. 2175.) The details by individual roads of the 8 switching carriers are shown on pages 2 to 9, inclusive, of Ex. 107, containing the same information as the recapitulation on page 1, which shows, for the 8 switching carriers in the Chicago district, the operating expenses for each of the years 1928, 1929, 1930 and 1931, separated according to the various groups Maintenance of Way and Structures,

Maintenance of Equipment, Traffic, Transportation, and General. Miscellaneous Operations and Transportation for Investment Credit are both omitted, as these items are extremely small and do not in any way influence the situation. The total operating expenses shown are the same as all the accounts previously enumerated, with the exception of the Miscellaneous Operation and Transportation for Investment Credit. We show the sum of operating expenses and tax accruals, with total cars handled, reported to the Interstate Commerce Commission in the annual report of the carriers, and in each instance throughout this entire exhibit the information has been abstracted from the re-
[fol. 1094] ports of the carriers to the Commission. (Tr. 2176.) The lower block shows averages per car handled, and shows total operating expenses per car handled increased from $3.86 in 1928 to $4.04 in 1931, and with tax accruals added the cost per car increased from $4.34 to $4.65; while the operating ratio, which is a true composite and not a simple average, has increased from 66.97 per cent to 74.11 per cent in 1931. (Tr. 2177.)

Have prepared similar information regarding the trunk lines in the original cost study, marked Exhibit No. 108, offered in evidence subject to objection. (Said document received in evidence and marked "Exhibit No. 108, Witness Vivian.") (Tr. 2177.) The figures for the individual roads are shown on pages 2 to 8, both inclusive, and in each instance are system figures for each of the railroads and are not comparable with switching lines and have been kept separate, although the information is of identical character, the various accounts being the same and the years being the same. (Tr. 2177.) The cars handled in each case have been revenue carload freight only, as reported in the commodity statistics in the annual reports to the Interstate Commerce Commission. The figures show total operating expenses increased from $74.72 per car in 1928 to $79.16 per car in 1931. With taxes added the increase was from $81.03 in 1928 to $86.45 in 1931, while the operating ratio increased from 73.8 per cent in 1928 to 78.45 per cent in 1931. (Tr. 2178.)

Have prepared an exhibit marked 109, dealing with railway operating revenues, expenses, net operating income, rate of return, and operating ratio, offered subject to objection. (Said document received in evidence and marked

"Exhibit No. 109, Witness Vivian.") (Tr. 2178.) Exhibit 109 shows similar conditions to the two previous exhibits, [fol. 1095] but covers all Class 1 carriers in the United States and large switching and terminal carriers, and indicates the rate of return in 1928 for Eastern district, ranging from 5.22 per cent in 1928 to 2.26 per cent in 1931; for the Southern district, excluding the Pocahontas region, return ranging from 4.14 per cent in 1928 to .34 per cent in 1931; for the Western district a decrease from 4.35 per cent in 1928 to 1.86 in 1931; while the entire United States has decreased from 4.72 per cent in 1928 to 1.98 per cent in 1931. In each instance for the entire United States the operating ratio has increased from 72.41 per cent in 1928 to 77.08 per cent in 1931. This information is taken from the Bureau of Railway Economics, Railway Revenues and Expenses, Monthly Report, Series No. 244 and 268. (Tr. 2179.)

The purpose of Exhibits 105 and 106 is to show there has been a routing of traffic from interstate routes to intrastate routes between the two periods of study, that is, November, which was prior to the effective date of the interstate increase, and January, which was subsequent. (Tr. 2180.) The figures do not take into consideration Ex Parte 103 increases. Those have been omitted in all instances. (Tr. 2180.)

We undertook to find out whether or not the lower basis of rates applying within the district, either in Indiana or Illinois, than applied to interstate shipments caused shipments to be routed over the state routes in preference to the interstate routes. (Tr. 2181.) To get that information we sent requests to the various carriers to furnish movements taking place subsequent to December 10, 1931, that were being routed via intrastate routes in preference to interstate. The information which we collected is not complete; in fact, no attempt was made to obtain complete data, as the length of time available for such study was [fol. 1096] entirely too short (Tr. 2181) to permit a complete statement, and we have prepared only illustrations of the rerouting of freight by shippers via intrastate in preference to interstate. (Tr. 2182.) The exhibit is marked 110, offered in evidence subject to objection. (Said document received in evidence, marked "Exhibit No. 110, Witness Vivian.") (Tr. 2182.) The exhibit shows dia-

grams of the routes shipments would take interstate and routes they did take to keep the shipments intrastate. (Tr. 2182.)

Page 1 of Exhibit 410 shows 30 illustrations embracing 334 cars moving between December 10, 1931, and March 3, 1932, inclusive. The illustrations are in symbols, beginning on page 1 with A (Tr. 2182) and ending with O, and the illustration later refers to the maps in the latter part of the exhibit, following page 4. On page 1 of the exhibit, under the columns headed Consignor and Consignee, we have used figures instead of giving names of either the consignors or the consignees, which was done under advice of Mr. Davis so as not to disclose names of either the consignors or the consignees. (Tr. 2183.) The working sheets show who those people are. (Tr. 2183.)

As to each movement we show switching charges which would accrue under the normal interstate route, compared with actual intrastate route. For the 334 cars we show loss of $3281.36 in revenue. The next three pages show illustrations of similar character, but we have not prepared maps for these, as the general illustrations which we have given cover the situation. (Tr. 2183.) We also show 522 more cars with an additional revenue loss of $4375.14. We have illustrated more than one-third of the cars we have found and the aggregate loss is $7656.50 of the 856 car total. (Tr. 2184.)

[fol. 1097] The map in each illustration was drawn to scale, the original map being extremely large, with track layouts in each having been checked by the engineering departments of the various railroads in Chicago so that we know that the track layouts are accurate. The railroads are shown by either solid lines, dash lines, or dot and dash lines, as the case may be, so that where one railroad delivers a car out and another picks it up it is clearly indicated. In each instance the black line is the interstate or natural route which the traffic followed prior to December 10, 1931, and the red line in each instance is the route now followed by the car to avoid an interstate movement and make it intrastate. (Tr. 2184.) The red line indicates an intrastate route in each instance. (Tr. 2184.) The mileages of both are shown, which was scaled from the original map. The industries between which the cars are moving are shown by numbers, and they are the ones that

appear in the analysis and details of traffic shown on the first four pages of the exhibit. The maps cover only the first page, and all figures are on the first page of the traffic analysis. (Tr. 2185.)

Illustrating how these movements would take place as between interstate and intrastate industry, No. 1 is as good as any (Tr. 2185), which is the one below the words "Barr yard," and indicates that it is two different plants of the same concern, where the same number is used in the different locations. And another movement as illustrative would be from industry No. 1 to industry No. 2, shown in the lower lefthand corner. (Tr. 2186.) From industry No. 1 the car is moved via the black line to a point midway between South Chicago yard and Colehour yard by the [fol. 1098] Pennsylvania railroad. From that point it is carried across the state line into the Colehour yard where it is put into a transfer train and moved via Clark Junction to the East Chicago yard of the Baltimore & Ohio Chicago Terminal, and from there the latter handles it in a transfer train moving to Barr yard, and from there it moves directly west, then south and southeast to industry No. 2 or No. 1, as the case may be, where it is placed, a distance of approximately 30 miles, which requires crossing of the state line in two different places. (Tr. 2186.)

Since the effective date of the interstate rate of December 10, 1931, these cars have moved via the red line north to 108th Street from industry No. 1, thence to the South Chicago yard of the Pennsylvania Railroad, there transferred to the Garfield Boulevard yard and from thence to 59th Street yard; thence north to the Homan Avenue yard of the Baltimore & Ohio Chicago Terminal, at which point the latter handles the car, carrying it back over more or less the same route past the 59th Street yard and south to Barr yard. From there it is placed in a transfer, taken back west to the Junction, and thence South and East to the industry. In this manner the car does not cross the state line, but follows an unnatural route covering a distance of 42 miles for the movement.

That is the principle upon which the other maps in Exhibit 110 are made. I call the one route the natural one and the other the unnatural (Tr. 2187), because I am told by operating people that the latter is the unnatural route because it must go against the flow of traffic; that to de-

velop economy and efficiency of service certain routes have been designed for the movement of certain types of traffic and to move this car via the red line is against the general flow of traffic. Prior to the effective date of the rates prescribed in Docket 19610 the black lines represent the [fol. 1099] lines traffic followed, as developed in our cost study, and otherwise, and that is one reason why I call these routes the natural ones, though it is not necessarily the shortest route in every instance. There are illustrations in here where the red line is shorter than the black line. (Tr. 2188.) There would be two lines via the black line and via the red line. In each instance the black line route and the red line route, two carriers would be involved, the same two railroads. The solid line is the Pennsylvania; and under the scale of miles of all railroads involved the Pennsylvania shows with the heavy line, the solid line, and that indicates that solid line is printed in both red and black for the route and the distance that they handle the car; and similarly the Baltimore & Ohio Chicago Terminal is shown with a dash line in both the red and the black.

Mr. Walter: Mr. Examiner, I would like to ask that you direct the witness to give us the names of the consignors and the consignees, so that we may know what the plants are and can make such investigation in the way of rebuttal as may be necessary, and would like also to know the character of the commodity. (Tr. 2189.) If they can furnish it today, it will shorten the time we will need to make our own investigations, and would want it to cover the 35 Mr. Vivian has here.

Examiner Faul: There is no objection on the part of any shipper to having this information disclosed in there, is there? I hear no objections here, so Mr. Davis will furnish the information to Mr. Walter. I understand this will suffice for his purposes.

Mr. Walter: Yes.

Mr. Davis: Very well, Mr. Examiner, let the record [fol. 1100] show that it is given to Mr. Walter in the form of a list of 118 industries as listed in Exhibit 110.

Examiner Faul: Proceed. (Tr. 2191.)

The Witness: Illustration N, a red line, is a route in which three carriers are involved, an unnatural route, approximating 13 miles. Via the black line, the natural route,

we have two carriers involved, and that traffic crosses the state line twice in making the movement, and in that instance the black line route, the natural one, is longer than the red line or the unnatural route, the former being 38 miles and the latter 13. (Tr. 2192.)

Nothing has been worked out to show whether the black line route, being some 20 miles farther than the red line route, was the more economical route of the two. (Tr. 2193.) But I have worked out some figures from the standpoint of the element of cost of service applied to Illustration A. From industry 1 on illustration A to industry 3, an industry at Harvey, the element of service was industrial switching at No. 1; transfer therefrom to Colehour yard the normal route; classification Colehour yard (Tr. 2195); and transfer thereform to Baltimore & Ohio Chicago Terminal yard at East Chicago, Indiana; interchange with that line being at East Chicago; classification by it in their East Chicago yard; transfer by it therefrom to Barr yard; classification there and transfer therefrom to Harvey; classification Harvey and industrial switching at industry No. 3, with total cost $10.41 of switching cost only. Now on the unnatural route industrial switching at industry No. 1; transfer to 108th Street yard; classification there that is all Pennsylvania operation; transfer from 108th Street to the South Chicago yard, a special move by locomotive; transfer from that yard to 55th Street, the Gar- [fol. 1101] field Boulevard yard (Tr. 2196); no classification in South Chicago yard because of a special move by a locomotive from 108th Street to South Chicago; classification at 55th Street yard (the Garfield Boulevard yard) to 59th Street yard, classification there and transfer therefrom to Homan Avenue yard of the Baltimore & Ohio Chicago Terminal, the point of interchange on that line; classification at Homan Avenue yard; transfer via that line from Homan Avenue yard to Barr yard; classification there; transfer therefrom to Harvey; classification there and industrial switching at industry No. 3, or a total cost of $21.78 as compared with $10.41 for the natural route. (Tr. 2197.) Those are 1926 costs—well, no, I would not say that they were 1926 costs either. They were the costs of the Chicago switching case, which are 1928.

In exhibits 101 and 103 for the two weeks covered by them we had the shipping dates in all instances, the shipping dates only. (Tr. 2198.)

GEORGE J. SHREEVE, duly sworn, testified as follows:

Direct examination.

By Mr. Davis:

Am general superintendent of the Belt Railway of Chicago. Have been connected ~~with it for 38 years in various~~ departments, beginning as a locomotive engineer, etc.

Mr. Walter: We will admit Mr. Shreeve's qualifications, Mr. Examiner. Mr. Shreeve knows his business. (Tr. 2190.)

The Witness: I have had experience with road haul train movements as distinguished from switching service. Road haul trains are made up in what is known as station order, so that cars on the head end can be cut off very easily at [fol. 1102] various stations between the yard or station from which the train departs and the station to which it is destined, and the same thing holds good with our switching movements, as far as transfer service is concerned. Trains for local runs are made up similarly, that is, the cars for the first set out are placed next the engine and so forth on until the train is finally delivered at its final destination. We have a locomotive in each case, and a caboose in road haul and transfer service. We have to have the air coupled in both instances, both (Tr. 2200) in road haul and the so called transfer service. We test the cars to see if air is working and the brakes properly functioning with respect to Interstate Commerce rules in both cases. We have train dispatchers controlling movements of all kinds over transfer routes as well as in trunk line service, with train sheets similar to those that are handled in road work. The billing of the cars as to giving train crews information and their destination is similar, comparing one with the other. Bills accompany each car, whether loaded or empty, or whether in switching movement or road haul. (Tr. 2201.) In handling the switching movement in trains such as described, there is no distinction between the interstate and the intrastate, so far as switching or switch movements are concerned. (Tr. 2202.) On a shipment having origin and destination in the district there is nothing to indicate whether it has intrastate or an interstate movement, so far as switching is concerned. In handling a car of freight

such as we have been talking about here in the district between two industries, and the handling of a car between two stations on the roads, so far as the operation and handling of the business is concerned, there is no difference that I know of. There is nothing I can think of that would indicate a difference between the two services. (Tr. 2202.)

[fol. 1103] Cross-examination.

By Mr. Walter:

As far as operation of the Belt Railway is concerned, I have jurisdiction over it. It is owned by 13 trunk lines in Chicago. There is a special arrangement between the Belt and these lines as to method of operating for the account of the individual carriers that own the road, which we have during these depressed times, where we perform some service for them, for which they pay us. This is done with our own power. That service is treated as a one-line haul, as if it was handled by their individual power. There is no change in the tariff arrangement at all. (Tr. 2203.)

I have looked over Exhibit 110. In illustration G in that exhibit the Belt Railway appears as the broken dash line in the diagram. Industry 1 shown on the map is served by the Pennsylvania Railroad, I think, but the Belt line does not reach that industry. We receive a car loaded to that industry at our South Chicago yard, and if going to industry 24 (Tr. 2204) the Pennsylvania Railroad might deliver that car direct from industry No. 1 to the South Chicago yard of the Belt Railway, or it may, depending on the line it comes over, deliver cars in our Clearing yard. (Tr. 2205.) It would be a Belt Railway movement from the time it arrived at the junction point with the Pennsylvania, and we would pay the Pennsylvania for performing the service, pay wheelage from our South Chicago yard to the Clearing yard. Time of day does not exactly determine as between the alternative movements. The volume of business and the importance of the movements of the car and such as that determine that. They might leave a car [fol. 1104] at South Chicago, and if they have a train coming to Clearing they may bring it over, but any rate it is the Belt's obligation, the Belt's expense for handling it, regardless of whether it is handled into our South Chicago yard and from there by Belt crews, or whether it is handled

to the Clearing yard by the Pennsylvania Railroad. We pay the expense. (Tr. 2206.) The Pennsylvania goes to Clearing over the Belt rails. It is a joint railroad, of course, owned, as I explained to you, by 13 different lines. (Tr. 2206.) If a car came from the Pennsylvania Railroad delivered to our South Chicago yard, it would be placed in our inbound records. The Belt, with our power would move it from South Chicago to Clearing and complete the delivery to the industry, but as the car came over the Pennsylvania and was handled to Colehour yard or from industry number 1 to the Clearing yard, we would have a record for the handling of the car by the Pennsylvania into our Clearing yard and we would pay them for the handling, that they did of the contents of the car that distance. That payment is under an agreement entered into by the 13 railroads and the Belt railway of Chicago. The purpose of the agreement is so that we, when we are paid the regular tariff rate, will compensate those lines for the service they performed that should rightly belong to us. (Tr. 2207 2208.) It is no concern of the shipper as to whether the Belt or the Pennsylvania does it. It should be treated as a two line haul. But if the Pennsylvania with its own engine took it to Clearing yard, it would be a 2 line haul because we employ the Pennsylvania to do that part of our work and we complete the work after the car has been delivered at our Clearing yard. We perform all services at all industries on our railroad, not only at Clearing yard, but all of them to the exclusion of the proprietary lines, that have no privilege, no right; under our [fol. 1105] contract they are not permitted to deliver cars to our industries. (Tr. 2208.) As we have something over 350 industries on our line and if we permitted the 13 lines to place the cars they bring for industries on our line, the industries would receive no service, the Belt would receive no service and it would clutter up the operation and make an impossible situation but the operation by the Pennsylvania in using our main line from South Chicago to Clearing does not clutter up the operation. (Tr. 2209.) From my standpoint, there is a reason why the Pennsylvania should not deliver direct to you at the South Chicago yard because there is an industrial crew doing the work on that branch. When it comes out at the junction with this branch line that runs to industry No. 1 they connect with their main line just a short distance from the Colehour yard.

If they have one car for the Belt Railway in this train they may have 2 or 3 cars for the Indiana Harbor, 1 or 2 for the Rock Island and some more for the New York Central, etc., (Tr. 2210-2211) and for them to cut off and leave the cars that they have gathered in this territory and run with 1 car to our South Chicago yard and with 1 to the Rock Island and 1 or 2 down to Colehour yard would be a waste of time, but the way they do now, they gather these cars all together, taking them to their Colehour yard where they are switched and those going to Indiana Harbor Belt are put on Indiana Harbor Belt tracks, those that go to the Baltimore & Ohio Terminal on Baltimore & Ohio Terminal tracks and those that go to the Belt go on certain tracks and those to the Rock Island on certain tracks and then there are transfer crews after those trains are made up not in 1 or 2 car cuts but cars that have been accumulating all day and that are making a run to the Belt at a given time and Rock Island at a given time and in that way they conserve their power and would save cluttering [fol. 1106] up our railroad by running light power back and forth to the various yards. (Tr. 2211.) I do not know what 108th St. yard is, (Tr. 2211) but taking the car from industry I shows the car at 108th St., and also going into the South Chicago yard so far as the Belt Railway is concerned it would be entirely agreeable to me to receive that car at the South Chicago yard and remove it to the Clearing yard and that is the normal route after we get it, and as to whether the unnatural route socalled takes the car to South Chicago yard or whether the natural route takes it to Colehour yard is a matter about which I express no opinion and have no knowledge. (Tr. 2213.) In any event, our service is just the same whether it is intrastate or interstate. We get the car at the same place and the handling is the same. There are many places where these various lines, trunk lines and switching lines interchange with each other but I cannot give you the number of interchange points we have with other lines including proprietary lines, but I think about 32. (Tr. 2214.)

There is no difference in handling the state traffic and the interstate traffic via our line and there is no difference in distances in handling the two kinds of traffic on our line because it is all in the state of Illinois. We are a part of a 2 line haul that does reach Indiana, as a part of a through route from points in Indiana. I imagine we handle

cars that originate all over the United States, moving in interstate commerce, but as to switching traffic, we do not handle it outside of the state. Taking this route G, if we receive the car at South Chicago, handled it to Clearing yard there would be no difference in the circumstances and conditions of the handling of a car which might have been loaded at industry No. 1 in Illinois and 1 loaded in Indiana but handled by us from the same point to the same point, so far as their handling is concerned. I meant that so far as handling is concerned there was no difference between [fol. 1107] the state and interstate traffic. (Tr. 2216.) But taking a car at South Chicago coming from Indiana, that we handle 20 miles on our line, would be a more expensive service than one of just going to Clearing, and we have the same difference between the intrastate cars as between the state and interstate cars, as far as we are concerned, speaking of our own railroad, and my testimony is limited to the handling by our road. (Tr. 2216-17.) We have a dispatcher for each 8 hour trick. They have nothing to do with industrial switching, only where the industrial switch engine goes on the main track; they do then. The dispatcher must know about that to keep the track clear, but so far as to directing their movements at the industries, he has nothing to do with it, the yard master takes care of all of that. (Tr. 2217.)

Cross-examination.

By Mr. Hufsmith:

Referring to illustration "G," the car moving from industry 1, we may receive that car at the South Chicago yard or we may receive it at our Clearing yard. When we receive a car at the South Chicago yard from the Pennsylvania, we do not know anything about it until we get it at South Chicago. (Tr. 2219-2220.) We have sufficient facilities in our South Chicago yard to handle all cars that might originate from industry No. 1. Pennsylvania is one of the group of joint owners of the Belt Railway. (Tr. 2220.) We have conferences quite often regarding bettering of the service; that is one of the things I explained here but on account of the slowing up of business, we have now arranged that we will take cars from the Pennsylvania to any point on our line. (Tr. 2221.) I don't think

we ever had a conference with the Pennsylvania Railroad to determine policy of handling cars moving from industry No. 1 to industry No. 24 for example. We had a meeting though of all the terminal superintendents not a month ago. [fol. 1108] (Tr. 2221.) We did not discuss at any of the conferences whether or not it might be advantageous or profitable to both of the carriers to do the switching at the South Chicago yard rather than take it to Colehour yard which is marked as the natural route in illustration "G". There are 13 carriers that own an equal interest in the property of the Belt Railway of Chicago. (Tr. 2222.) The Belt Railway's purpose is to serve as a switching facility to serve industries located on its line and interchange cars between all trunk line carriers that enter Chicago, (Tr. 2224) and it handles an interchange business between all lines. It is a connecting link between all of the trunk lines and serves about 350 industries. (Tr. 2225.) From my observation and experience in Chicago, I would say it would be an utter impossibility to run all the trunk lines to the various industries in the city of Chicago and that is why we have the Belt Railway in order to make a connecting link or connection between the various lines, in fact, between all lines. (Tr. 2226.) About a month or 6 weeks ago, we had a conference with the operating officials that is the superintendents of the 13 carriers with respect to dispatching this traffic over the Belt Railway to the connections of the 13 carriers. (Tr. 2226-2227.) Since June or July, 1915, we have been receiving from the Pennsylvania, moving over the black line, as indicated in illustration G. (Tr. 2228.) Starting with the first illustration in Exhibit 110, we do not participate in the movement illustrated by A, B, C, D and E. We participate in the movement illustrated by F, and the broken black line, the portion of the move handled by the Belt. (Tr. 2229.) We have been handling cars via that route indicated by a broken black line ever since the time I mentioned, some time in 1915. We do not participate in traffic illustrated by H, but do in J and have handled via that route since [fol. 1109] 1915. We do not participate in illustrations K, L, (Tr. 2230) M and N. The situations indicated in Exhibit 110 in which the Belt Railway participates have

not changed so far as the Belt Railway movement is concerned for the period I have indicated for some 15 years. (Tr. 2231.) I am the one who called the operating officers together for the conference with the 13 carriers, (Tr. 2231) and have suggested changes but not as to these movements we have been discussing. I know a lot of other changes though in the way of improvements depending on the business conditions. (Tr. 2232.) There has been no change in the method of operation other than the consolidation of work in order to economize, as far as our railroad is concerned and our connections with various railroads which is, I think, quite stationary. The Chicago Northwestern in the last few years has made 1 change whereby they take their road haul business at Proviso and there switch business at 40th St., but other than that we have made no change in our points of interchange with any of the lines. (Tr. 2234.) If we have a car going as an industrial move and at the same time one available going in line haul movement, the destination of the line haul car does not alter the progress as to the routing of the industrial movement. (Tr. 2234.) If an industry has 2 cars to move, 1 in line haul, moving to the classification yard on the left and 1 to an industry on the right, the fact that the 2 cars are there to be picked up does not have anything to do with the movement of either one. They would both be picked up by the same crew and taken to the base yard where we make up our trains and distribute our traffic from the base yard. (Tr. 2235.) The movement of a car from 1 industry to another on our line does not always go to the classification yard. (Tr. 2236.) It might move from 1 industry to another.

[fol. 1110] Mr. Hufsmith: Now, my point is would this car be picked up, the 2 cars, and taken to the classification yard and then the car brought back to the industry by virtue of the fact that there was a car there that was destined to the classification yard going out in line haul.

The Witness (continuing): If I follow you, I do not know of any case where a movement of that kind has been made on our line.

We make any movement in order to make a short cut on our line. (Tr. 2236.) We always do that when industries call on us to do them a favor, moving cars and have moved

cars out of the regular routine of handling. It is done nearly every day to accomodate somebody, but I am talking now in answer to your question of the regular flow of traffic the natural way it was moved. (Tr. 2237.) If an industry had 2 cars destined to Indianapolis, and 5 cars for Sioux City, there would be no difference in the way they would be picked up. (Tr. 2237.) They would all be moved with the same crew and go into the base yard but they may take different routes, 1 car might go South and the other North, but they would go into the same base yard and there be put into trains moving in the direction that the cars are moving in; it would be the route on which they were billed, and the direction in which they would be going. They would all go into the same base yard, and then be put into different trains. Cars to Indianapolis might go over the Monon and the cars to Minneapolis and other points might go over the Chicago & Northwestern, the Chicago, Burlington & Quincy, and so on. (Tr. 2238.) In a movement from industry No. 24 going to the Pennsylvania, it would in that case be delivered to the Pennsylvania and [fol. 1111] put in a Pennsylvania train in our clearing yard and handled by the Pennsylvania from there to their Colehour yard. (Tr. 2239.) As far as our switching service is concerned, as between the same two points on our line, we have no difference in handling between the interdistrict and that which we turn over to a connection. The cost of fuel differs in the different classes of service. It varies somewhat. It varies as to the character of the engine and the character of service by the engine to some extent. (Tr. 2240.) An industrial car gets much more handling. A car to an industry gets very much more handling than a car moving between 1 road and another. The fuel consumption per hour by an engine in a given service does not vary a great deal per hour. (Tr. 2241.) We have transfer engines all about the same class, the same size and they burn about the same amount of fuel per hour or per car and we have other locomotives that do industrial work. The engine from South Chicago to Clearing yard would not use approximately the same amount of coal whether it was taking one car or 10. (Tr. 2241.) There is a difference in engine coal consumption between the handling of 1 car and 10. I cannot give you the approximate difference but there is a little difference. (Tr.

2245.) I think an engine would consume a little more coal handling 10 cars as against handling 1, but just how much, I am not in a position to state, but it would not be 10 times more than the handling of 1 car or anything like that. (Tr. 2245.) We have got the locomotive to handle anyway. We are running 5 trains per day between South Chicago yard and Clearing yard, and we could handle a lot more cars per train than we are handling and could put them all in one train if it were not for the connections and the demands that are made by the industries for the service. (Tr. 2246.) A special move would be a car that we would take and handle for some considerable distance that *that* was [fol. 1112] desired by an industry or a consignee and we would charge for that, but the moves I mentioned are not special. In 1928, we were running twice as many trains between Clearing and South Chicago as we are running now. We now run about 60 or 65 crews daily and in 1928, 105, 110 and 115. We have 5 men to a crew and they run for about the same length of shift they did in 1928. (Tr. 2247.) The volume of business has been entirely responsible for that decrease. The output per crew is less now than it was in 1928 and figuring this last 10% reduction, the wages are less but I do not know whether coal costs more or less, as I have nothing to do with the purchasing. (Tr. 2248.)

Cross-examination.

By Mr. Cardy:

Illustration J is the only knowledge I have indicating that since the higher interstate rates have been effective it has had the effect of confining movements originating in Illinois to intrastate routes. (Tr. 2249.) That is the first knowledge I ever had of anything of that kind, (Tr. 2249) and not being familiar with what the other roads were doing, I cannot answer whether or not it has materially shortened the mileage of the movement on the intrastate traffic. (Tr. 2249.) As to whether or not it would be more difficult and more costly to handle via the black line than via the red line as shown here, I do not know anything about the route of the Pennsylvania and the Indiana Harbor Belt. I know it costs money to handle cars any distance. (Tr. 2249-2250.) Prior to January, I did not know

the percentage of traffic originating in Illinois for Illinois destinations that was handled through Indiana as compared with the amount of traffic that is handled today. (Tr. 2250.)

A. E. JACOBY, was sworn and testified as follows (Tr. 2251):

[fol. 1113] Direct examination.

By Mr. Davis:

I reside in Chicago and am train master of the Pennsylvania Railroad and have been connected with that road 38 years, 32 years in the operating department. I have had experience in operating both line haul trains as well as switching movements; road trains on the Fort Wayne division, the Logansport division and the run over the Chicago Terminal division. (Tr. 2251.) My experience in the operating department has been entirely on the Chicago Terminal division, handling transfer freight from 1 industry to another in the district. The transfer trains consist of cars moving interstate and intrastate. Road haul movements and swich business are included in the same trains. Transfer trains, yard to yard movements are complete trains with a caboose. They are made up with the air coupled and in working order and are handled both under the jurisdiction of yard masters and train dispatchers. (Tr. 2252.) We do not limit one transfer train to state movements and another to interstate. We have both classes of cars in the same transfer movement. (Tr. 2252.) Taking Exhibit 110, the portion of the Pennsylvania railroad shown in red in Illinois, along which are indicated Industries 1, 4 and 12, is the portion of our road known as the Calumet River Railway along the East side of the Calumet River. It is served by power and cars working out of Colehour yard which is just over the line in Indiana. The state line crossing the lead to the yard at the West end. (Tr. 2253.) Cars to and from industries on the Calumet River Railway are normally handled by using the main line of the Pennsylvania to the junction with the Calumet River Railway at what is known as River Branch Junction, adjacent to the bridge crossing the Calumet

River near South Chicago. A car from industry No. 1 directed to industry No. 2 on the Baltimore & Ohio Chicago Terminal would normally move from the industry to Cole-
[fol. 1114] hour yard with the industry engine coming to Colehour yard at the conclusion of its tour of duty. After classification in Colehour yard for movement to East Chicago, the car would move via Clark Junction to that point where it would be delivered to Baltimore & Ohio Chicago Terminal for further movement in the industry. That is the normal route.

As to the route shown in red, in order to keep the car from crossing the state line, it is necessary to move the car with the industrial engine that brings it from the industry to a set of tracks at South Chicago involving special service performed by the engine and crew on its way to Colehour yard at the expiration of its tour of duty. The car is later taken at South Chicago by transfer to Garfield Blvd., yard, where it is classified into a train. (Tr. 2254) for 59th St., and again classified into a train for the Baltimore & Ohio Chicago Terminal and is later delivered to that line at its Homan Ave., yard and that company handles it from there. (Tr. 2255.)

Taking illustration A, so far as the Pennsylvania railroad is concerned, it has no yard at South Chicago. We have a track there commonly known as High Five, ordinarily used for storage purposes or for the accommodation of cars for industries on the Cummings branch; but with present volume of business, it has been possible to clear that track and use it for setting off and picking up cars to keep them from crossing the state line into Indiana. This track has not been of sufficient size to handle all the cars in some cases and in the event they have been set off and picked up in what is colloquially known as the "tailor" track along the Calumet River Railway just a short distance from the Junction point of the main line. (Tr. 2255.) 108th St. yard is one used for serving the numerous indus-
[fol. 1115] tries from River Branch Junction to Hegewisch, comprising the Calumet River Railway. When there is sufficient traffic to demand it, trains are moved from Colehour to 108th St., yard where they are classified and taken to industries or industrial districts along the Calumet River Railway. That would be an interstate movement. There are four main tracks from Colehour to Garfield

Blvd., as shown on the map: As to industry No. 1 the normal movement after entering upon the main track at River Branch Junction would be to follow the current of traffic on main track No. 1 to Colehour. (Tr. 2256.) A switch engine or industrial engine taking a car ordered by a shipper to be handled in state traffic in going from River Junction to South Chicago tracks or yard would after entering on the main track at River Branch Junction, proceed westward on track No. 2 to cross over a little distance West of the West end of the track designated as High Five, then cross over at that point and return and set off the car at High Five and proceed to Colehour No. 2 track is a West bound freight track. In taking the car to South Chicago to hold the traffic within the state, the industrial engine in handling the rest of its load, would do the most economical thing and that is to set the car out at High Five, South Chicago, on the trip to Colehour, that is, set the car out at South Chicago and continue on the trip to Colehour. (Tr. 2257.) Taking industries 6, 8, 9 and 11, they are really all located at one plant and are ordinarily served from the East end, from the direction of Colehour by crossing the Indiana-Illinois state line. That is the normal and economical way to serve that plant on movements therefrom to Blue Island. To avoid crossing the state line, the engine will go to a point near 103rd St., West of the industry by using West bound passenger main track No. 4 and there enter the industry and perform the switching, taking cars [fol. 1116] out at the same gateway through which they entered and running thence to the South Chicago yard, or as stated, High Five, where the car is left, the engine then returning to Colehour. (Tr. 2258.) This is special service. Later, that car is picked up by the transfer run between Colehour and Garfield Blvd., yard, following the unnatural route. That movement described from those industries to South Chicago is not normal. The normal movement would be entering the plant from the Indiana side as I described it, pulling cars into Colehour yard classifying them and when left at South Chicago, the industrial locomotive goes back to Colehour and a transfer train operating between Colehour yard and Garfield Blvd., stops at South Chicago and this car or cars are picked up and taken to Garfield Blvd. (Tr. 2259.) After reaching Garfield Blvd., they are classified and put in a train for 59th St., moved to that

yard, again classified into the local for Dolton and moved to that yard, where again classified and put in train for Blue Island yard and the Indiana Harbor Belt, where delivery is effected, thus ending the Pennsylvania Railroad connection with the car. (Tr. 2260.) Take illustration C, the cars would be handled to South Chicago yard and picked up by the transfer train working out of Colehour to Garfield Blvd., yard, the same as described in illustration A and when it reaches Garfield Blvd., after classification, it is taken to the 16th St., yard and that transfer delivers it to Western Avenue where it is turned over to the Burlington. (Tr. 2260.) In illustration C you will notice that the natural route and the unnatural routes are the same, with the exception that to keep the car out of Colehour it is necessary to give special service from River Branch Junction to South Chicago and again special service in picking it up from transfer run to reach Garfield Blvd. (Tr. 2261.) If it was not for the request or order of shipper to keep movements within the state, if originating at [fol. 1117] industries 1, 12 or 14, the industrial locomotive would take the cars and direct to Colehour yard, where they would be classified and put in transfer train going to Garfield Blvd., yard. Illustration D is a single line haul, both industries No. 1 and 18 being located on the Pennsylvania railroad. The socalled unnatural route shown in red is likewise the natural route except to keep the car from entering Colehour yard. We resort to extra or additional service in handling the car from River Branch Junction to South Chicago yard setting it off there and later picking it up at that point for Garfield Blvd. (Tr. 2261.)

Illustration E is substantially the same movement between two industries, both located on the Pennsylvania railroad.

Illustration F concerns movement of a car from an industry on the Pennsylvania railroad in Illinois immediately West of the state line to an industry in South Chicago district on the Belt Railway. Under normal handling of that car we would reach the industry from the West end across the state line and take it back to Colehour yard for classifying it into a train for Belt Railway Commercial Avenue, South Chicago. To keep such cars from crossing the state line, we resort to the special service of using the high speed West bound passenger main track to 103rd St.,

entering industry at the west end, (Tr. 2263.) involving considerable more expensive switching operations and return from industry to the main track at the same point, running thence to South Chicago from which the cars are later moved to Commercial Ave., yard of the Belt Railway at South Chicago, where the Belt handles it from that point to the industry. If we did not have to keep it intrastate, the movement would be direct from Colehour yard into Commercial Avenue yard and we would enter the Belt tracks at a connection adjacent to the Calumet River just at the West side of the bridge. The movement from South [fol. 1118] Chicago yard as shown here to the Belt Railway is a special or separate movement. We have no service to and from this so-called South Chicago yard other than that necessitated by keeping the cars intrastate. (Tr. 2263.) It is a special service but is not asked for by the shipper. It is not the ordinary service; it is extraordinary service. During a considerable portion of the period from December 10 to date, we have had to have extra engines to make the numerous special moves and the greater portion of the time is concerned in making them, although in addition to the special engines, these special moves have been made as already described by engines otherwise in service enroute to and from Colehour yard. (Tr. 2264.) I am informed the New York Central serves industry No. 8.

As to illustration F, assuming the New York Central serves industry No. 8, the movement of this delivery on the Belt railroad, the interchange being at Englewood; both the industry and Englewood yard are in the State of Illinois. Englewood on the New York Central is right adjacent to the Englewood station on the Pennsylvania railroad. (Tr. 2265.) It is 7 or 8 miles from South Chicago either via the Pennsylvania or the Belt as shown by illustration F. to Englewood on the New York Central. As to Illustration G, covering movement of Pennsylvania to the Belt, we transfer to the Belt both at Commercial Avenue yard and at Clearing. Delivery at Commercial Avenue yard was originally set up to carry cars which the Belt interchanges with various connections through that yard that is in the South Chicago district; and also to carry cars for industries on the Belt in the South Chicago district as far North as 83rd St., the object being to provide economy of service both for the Pennsylvania Railroad and the Belt

(Tr. 2266) though there are other cars delivered in the Commercial Avenue yard of the Belt Railway. (Tr. 2267.) For example, the Pennsylvania makes delivery of a pretty [fol. 1119] heavy train into Commercial Avenue yard at South Chicago every night about 1 A. M., carrying not only cars for that district, but through routed cars for industries on connecting lines and industries on the Belt. The delivery is made to connect with the run which the Belt has out of Commercial Avenue early in the morning, which makes connection with the morning trains of the Western railroads. Commercial Avenue yard is the same as the illustration shows as South Chicago yard on the Belt railway. Whether we deliver a car to the Belt at the Commercial Avenue yard or South Chicago or Clearing, the natural route would be to take the car from industry No. 1 into Colehour yard, which is East of the Indiana-Illinois state line. If it had been taken to Colehour yard, with the engine returning from industry No. 1, it is possible the car would have been transferred by the Pennsylvania Railroad engine and crew to Clearing. (Tr. 2268.) As we have at least 2 trains per day from Colehour to Clearing and sometimes more; but to keep the car in state traffic, it was necessary to make the moves. I have described on some of the other illustrations, of taking the car to South Chicago on the Pennsylvania and bringing it back to the Belt Railway at Commercial Avenue yard. (Tr. 2269.) Illustration H involves movement between the Pennsylvania and the Chicago & Illinois Western, showing an unnatural route which really is coincident with the natural route, so that the only thing involved is the extra service in handling the car from the industry to High Five at South Chicago, picking it up at that point and taking it to Garfield Blvd., yard in the through transfer. (Tr. 2269.) Though the unnatural route in this illustration and a few others is approximately 3 miles shorter than the natural one, (Tr. 2269) the service over the natural route is less burdensome than over the unnatural one in that it involves less engine hours, due to the conditions described, requiring the loco- [fol. 1120] motive doing the industrial work at industry 12, etc., to run to South Chicago, out of its natural route. (Tr. 2270.)

Illustration J covers movement of a car from industry 026 to a point on the Michigan Central. Delivery is made

to the Belt at Kensington. As described in connection with another illustration, the switching of this particular industry was attended with a good deal of difficulty and with increased engine hours on account of serving it from the West end of it and off the passenger main tracks instead of the East end of the industry which is right at Colehour yard. The movement being across all four of the main tracks to South Chicago yard, all of which has been touched on before. (Tr. 2270-2271.) The normal movement would be to take the car from the industry direct to Colehour yard because leaving the industry at the East end, we are at the cross over leading right into Colehour yard. At this point the car would have been classified for delivery to the Indiana Harbor Belt at Michigan Avenue just about a mile beyond the junction point of the Indiana Harbor Belt and the Pennsylvania Railroad at Indiana Harbor.

Illustration K deals with the Pennsylvania and the New York Central. This illustration is a little different from any one of the preceding ones heretofore discussed for the reason that it involves movement for an industry on the Calumet River Railway (industry No. 1 to one located on the New York Central at 79th St., also indicated as Industry No. 1. (Tr. 2271). The normal movement of that car would be to bring it with the engine, serving the plants into Colehour yard for classification into a train for the New York Central. The latter handles interchange between its line and the Pennsylvania in both directions, that is, delivering to the Pennsylvania at Colehour yard and picking up the train for return movement to its Engle- [fol. 1121] wood yard. The car would have been delivered to the New York Central in that manner at Colehour yard and, of course, would have crossed the state line twice. To avoid that, the car was handled from the River Branch Junction to High Five at South Chicago, left there by the engine returning from the plant to the Colehour yard. Another movement was made from there to the New York Central by crossing the passenger tracks entering the Schwill Malting Co., at 103rd St., passing the West end of the Schwill plant and entering upon the tracks of the New York Central where the car was left for it to pick up. (Tr. 2272.)

Illustration L is similar to K, but the industry involved is one on the main line of the Pennsylvania railroad at

about 103rd St., just a stones throw West of the Colehour yard. The normal movement would be to take that car and bring it to Colehour yard for classification into a train for the Indiana Harbor Belt, delivering it at Michigan Avenue yard at Indiana Harbor. The movement given it was a pick up at the industry and thence westward to South Chicago where it was later picked up by a transfer. (Tr. 2273.) That movement should be reversed. It was from industry 28 to industry 29. (Tr. 2273.) But that does not make any difference. (Tr. 2274.) It does not make any difference as far as the elements of service are concerned on the Pennsylvania Railway, because the car had to be classified at Garfield Boulevard yards, placed at the head of the transfer moving to Colehour, set off at South Chicago yards, and thereafter handled specially by an engine sent from there for that purpose, and taken and placed on the industry siding near 103d Street, which is the reverse of the movement as stated and described, but we have just as much additional engine service as the other movement would have involved. (Tr. 2274.) If the car had not been handled that way the Indiana Harbor Belt would have given [fol. 1122] it to the Pennsylvania Railroad at Indiana Harbour at the point of interchange of those two roads at that yard. (Tr. 2274.) The interchange between the Indiana Harbor Belt and the Pennsylvania at Indiana Harbor is at the junction which is north from the Michigan Avenue yard about a mile. (Tr. 2274.) We take the car at that point and bring it to Colehour and from Colehour would make delivery with the industry engine involving only a few minutes' work because of the nearness of the industry to the yard. Illustration M indicates movement from industry No. 30 to 31. The industry being located on the Pennsylvania at Englewood, the natural route would be for the Indiana Harbor Belt to deliver to the Pennsylvania at Indiana Harbor, from which we would bring it to Colehour and thence move to Garfield Boulevard and place at Englewood. To keep the car from crossing the state line it was delivered at Dolton yard on the Panhandle, where classified in a train for 59th Street, and after classification at 59th Street moved to Garfield Boulevard and thence to Englewood. (Tr. 2275.)

Illustration O refers to movement from industry No. 1 on the Calumet River Railway branch of the Pennsylvania

to industry No. 35 on the Baltimore & Ohio Chicago Terminal west of its Homan Avenue yard; normal movement for the Pennsylvania would be to bring the car to Colehour yards with the engine serving the plant, and thereafter move it to East Chicago via Clarke Junction for delivery to the Baltimore & Ohio Chicago Terminal for further handling. (Tr. 2276.) To avoid crossing the state line the car received special handling from River Branch Junction to South Chicago, there picked up by transfer and moved to Garfield Boulevard yard, where it was classified for delivery to 59th Street over the Englewood connecting railway and thence moved in a transfer from 59th street yard to Homan Avenue yard of the Baltimore & [fol. 1123] Ohio Chicago Terminal. (Tr. 2276.) The normal route, as is stated in the exhibit, is the natural route, the route that the traffic moves by reason of volume and economy, and am referring to road haul traffic now. We must take of all classes of traffic, inasmuch as it all moves in the same trains and through the same gateways. The switch business and the other business moves altogether in the same trains. (Tr. 2277.)

Cross-examination.

By Mr. Hufsmith:

At the Pennsylvania Dolton yard the Indiana Harbor Belt has a connection for Blue Island, and the Baltimore & Ohio Chicago Terminal for the Barr yard, but it is not now in use. There is such a connection but it is not now in use. (Tr. 2278.)

Cross-examination.

By Mr. Walter:

As applied to switching in the Chicago district, it generally devolves upon the train master on most roads to set up the interchange arrangements and the program of movements as to frequency, etc. (Tr. 2278.) I do not mean arranging for interchange with various lines in the district, exactly. I would say interchange arrangements as a general rule, when not dictated by absolute necessity, are set up by special agreements between the interested roads. It is largely a matter of agreement between car-

ries to resolve their conflicting views as to when they *they* will interchange and at whose convenience. Not long ago the interchange between the Rock Island and the Pennsylvania was being made at three different places, which was discontinued at all three and passed through Clearing, each road being an owner road of the Belt Railway, and they were thus enabled to make a direct interchange with each [fol. 1124] other through that medium, being done in the interests of economy. (Tr. 2279.) This was done within less than the last four years. (Tr. 2279.) I do not know that many of these changes have been made in that period. It is a process that goes on as we are improving the service at every opportunity. That is upon the normal course of things, but changes of that nature have been quite rare and I cannot think of any other at the present moment. This change, as far as the Pennsylvania Railroad is concerned, did not result in any economies. As to the Rock Island, I could not say. Only the Rock Island and our road were interested in this change. (Tr. 2280.) I imagine it did help the Rock Island, because that road felt that it did at the time. I am informed that the Rock Island felt it saved some money or was economical. (Tr. 2281.) Based on that information I will say that it did result in economy to the Rock Island Railway. (Tr. 2281.) I presume the information was correct. (Tr. 2281.) The Pennsylvania is an important switching line in Chicago, handling considerable intra-switching district business. On page 1 of Exhibit 110 there are three cars shown that were not handled by the Pennsylvania Railroad, being line numbers 27, 28 and 29. No, there were but two. (Tr. 2282-2283.) All cars on the next page were handled by the Pennsylvania and all but one on the next page, item 90; all on page 4. Out of the 856 cars shown as illustrative of carload movements only 3 of them were not handled by the Pennsylvania. The Pennsylvania is involved in every movement but one shown on the map of all the illustrations from A to O. (Tr. 2283.) The Calumet River Branch is a branch of the Pennsylvania Railroad, extending along the east side of the Calumet River from a point near Hegewisch to the [fol. 1125] junction of the main line of the Pennsylvania Railroad at or near South Chicago. On that line is the Republic Steel Corporation, the Marblehead Lime Company, the General Chemical Company, the Keystone Ele-

vator, the Norris Grain Company, the Valley Mold & Iron Corporation, Interlake Iron Corporation, Federal Furnace plant, and a few smaller industries. In establishing a regular service from these industries, even though the movement was heavy enough (Tr. 2284) to warrant it without going through Colehour, we would do just what we have done; that is, involve the additional engine-hour service that I have mentioned in my testimony, which has aggregated 8½ hours per day, with no reduction in the other direction. The state line crosses over the west entrance to Colehour yard, and if that yard had been located a little north there would have been none of this change of service entering into it and the shipments would have continued to move into and out of Colehour yard. (Tr. 2285.)

Mr. Vivian's statement as to illustration A, that a car from industry No. 1 would have industrial switching, is correct. (Tr. 2285.) It is handled by the industrial switch engine into South Chicago yard today, but there must be a classification at 108th Street in order to set the car off at South Chicago while the engine is en route to Colehour. The classification at 108th Street is simply a separation of the cars to be set off at South Chicago yard and putting them on the head end so that they can be set off with the minimum delay. We divide the train into two classifications of cars, those that are left at South Chicago and those going into Colehour. That is the only form of classification we have at 108th Street. (Tr. 2286.)

The only industries on the Calumet Branch that do their own switching and have their own engines are the Interlake Iron Corporation and Federal Furnace branch. In switching they do not group the cars as to those to the Illinois [fol. 1126] destinations and those to the Indiana destinations; they group cars for the Indiana Harbor Belt and for the Pennsylvania Railroad, and all cars for the Indiana Harbor Belt would go southward. The cars would be divided, one bunch being all Indiana Harbor Belt, and all of them except those going to Illinois destinations would move through Colehour; that is all cars routed for our line would normally move through Colehour yard except those going via our line to points north and west of River Junction that require intrastate movement. (Tr. 2287.) In mentioning the Indiana Harbor, by agreement it has rights to reach the industries on the Calumet River Railway. They

do not go in there with their engines because the Pennsylvania performs that service jointly for the two lines because that is economical. There is no connection between the Baltimore & Ohio Chicago Terminal at 59th Street and our yard at 59th Street, so it has to go on to its Homan Avenue yard and go back about 9 or 10 miles. That is the normal way of doing business. (Tr. 2288.) The only reason for the change in routing shown on illustration A is the cost to the shipper. (Tr. 2289.) There are about three industries there which are located between the New York Central and the Pennsylvania main tracks in Illinois, just west of the state line. They are the only ones in that territory adjacent to the New York Central which are reached by both lines. There are no industries there reached only by one of the lines but which, by the installation of a track, could be reached by the other. (Tr. 2289.)

I heard Mr. Shreeve's testimony regarding illustration G and agree with his statement as to the manner in which the operation is performed. We always have two trains per day going to Clearing from the South Chicago yard, and quite frequently three. Regarding the consolidations [fol. 1127] of those trains with the Pennsylvania and the Belt so that the latter would not have 25-car trains, our trains are pretty heavy, running as high as 125 cars per train and as low as 60, and there is the fullest cooperation between the Belt Railway and the Pennsylvania (Tr. 2290); because when the volume of west-bound traffic flowing through Clearing is in excess of our ability to handle with two trains, the Belt is always very glad to take that overflow at Commercial Avenue. I have no information as to the number of cars the Pennsylvania hauls for the Belt, for which the Belt pays at the rate it is supposed to collect, and have no way of telling that, but the Belt Railway records would show that; at least I assume they would. (Tr. 2291.) If we were operating the Chicago terminals and had sole control, the movement shown in illustration J between industry No. 26 and industry No. 27, that is, from the Updike Grain Company to A. Schwill and the Kensington elevator, whether moving via the red line or the other, would make very little difference so far as the Pennsylvania Railroad is concerned. It would make very little difference which way it moves, whether we deliver the car to the Michigan Central by way of the Belt of Chicago or by way

of the Indiana Harbor Belt; service is practically the same in both cases. The distance from industry 26 to the Belt Railway Company yard is about 2, perhaps 2½ miles, and if the Pennsylvania took it to the intersection just north of the Michigan Avenue yard where we turn it over to the Indiana Harbor Belt, it would be about three times as far. (Tr. 2292.) Whether we haul it 2 or 2½ miles or the 9 miles' distance, it does not cut so much figure. The cost of the service involves a good many factors other than distance. One of them is volume. As to distance being a minor fac- [fol. 1128] tor generally speaking, throughout the district, I would agree with you that the most circuitous movements might possibly be the best movements, the most economical movements, in certain cases. (Tr. 2293.)

Taking the Belt Railway haul into Chicago and as to whether that was preferable to the movement from the Indiana Harbor interchange all the way around over to Gibson yard and then turning it over to the Michigan Central to take it into Kensington yard, involves a knowledge of operations on the Indiana Harbor Belt and the Belt Railway regarding which I should hesitate to speak, and I do not know that they would take it through the Michigan Avenue yard. I cannot say how the Indiana Harbor Belt handles them; I cannot answer the question. If the Pennsylvania received them we would ordinarily take them to our first yard and there classify them and I would expect the other lines to do the same thing, but I do not know. I could not say positively. But having these things in mind, I cannot say that the movement by the Belt Railway through South Chicago yard to Kensington Avenue yard would be a much more economical movement, as indicated by the exhibit here, than to take it around the black route, because there would be so many factors involved and my knowledge of the operations of the Belt Railway in the district are so limited that I cannot answer the question. (Tr. 2295.) In the last three or four years there has been very little change in switching service in the district that would affect the service and the cost. (Tr. 2295.) The volume of business has slumped tremendously. Wages have been reduced. Supplies are out of my line. (Tr. 2296.)

Examination by Examiner Faul:

My understanding is that these so-called natural or nor-
[fol. 1129] mal routes described in each of the illustrations shown in Exhibit 110 are in each instance the most economical route, and I do not say it is the natural route simply because we have been handling traffic that way for the last ten or fifteen years. I think it is in fact the most economical route, taking into consideration all the factors (Tr. 2296), even though the distance is 10, 15 or 20 miles longer. It frequently happens that we can afford to go a little out of our way to gain economy, just as an automobilist will go out of his way to get on a stone road and keep on a stone road.

Recross-examination.

By Mr. Walter:

As to illustration J, I said that so far as the Pennsylvania Railroad is concerned, there is no difference in practical operation, there is no difference in time consumed as between the red route and the black route, and there is no difference in expense involved, whether we deliver the car to the Michigan Central via the Indiana Harbor Belt or the Belt Railway of Chicago, but as to the expense involved, however measured, after the car gets to the road beyond the Pennsylvania, I cannot answer that question. I do not know as it makes any particular difference as far as the Pennsylvania is concerned which way they move it. (Tr. 2298.)

Mr. Walter: All right. In so far as you are concerned, it would not make any particular difference so far as the Pennsylvania is concerned whether it is red or black, and you say you do not know what it is as to the black, then you cannot tell us whether it is more economical by the red line than it is by the black; is that not a correct summary of your statement?

The Witness: Yes, you can take it that way. (Tr. 2299.)

[fol. 1130] Cross-examination.

By Mr. Shafer:

In referring to illustration B, my statement that the so-called natural route was the most economical route was

so far as the Pennsylvania is concerned. My answer would be the same in connection with illustration O.

Examiner Faul: We will take a recess at this time until 9:30 A. M. tomorrow, May 3, 1932. (Tr. 2299.)

Pursuant to the adjournment, the hearing reconvened at Chicago, Illinois, May 3, 1932, at 9:30 o'clock A. M. (Tr. 2300.)

A. E. JACOBY resumed the stand and testified as follows:

Cross-examination continued.

Mr. Walter:

Referring to Exhibit 15, an official map of the Chicago district, the line of railroad marked thereon "(Pa.-IHB) S. C. & S. (Pa.)" leading to Colehour belongs to the Pennsylvania Railroad and is operated by it exclusively. The line of railroad immediately to the west, going through Hutchinson and Clayburn, belongs to the Pennsylvania Railroad, but the Indiana Harbor Belt has rights to use it under agreement. The Indiana Harbor Belt does not do any switching to and from the industries on that line. The Pennsylvania does that at the industries jointly for the Indiana Harbor Belt and the Pennsylvania. If the Indiana Harbor Belt takes a car from a yard on that line to a point on its own line, it would be a one-line haul, even though the Pennsylvania took the car from the industry to the yard. (Tr. 2301.) And when it moves from a point at an industry on that track via the Pennsylvania to a point [fol. 1131] on the Pennsylvania, that is also a one-line haul. It is the track I referred to yesterday as the Calumet River Railway. Beginning at the north end and continuing to Hegewisch, the first industry at the west end, on the Calumet River line, is the Norris elevator, then the large industries follow in this order: Chicago Shipbuilding Company, Marblehead Lime Company, Keystone Elevator, a foundry concern, the name of which I do not now recall, then the Interlake Iron Corporation, Federal Furnace branch, Republic Steel Corporation (Tr. 2302), Prest-Coke Company, and the General Chemical Company. There are

also some smaller industries. The Indiana Harbor Belt takes loaded cars from the 108th Street yard for each and every one of those industries named, to points in the Chicago switching district; but usually the Indiana Harbor Belt cars are pulled from the yard immediately south of the 108th Street yard, which is called the 112th Street yard, a junction of the 108th Street yard, (Tr. 2303), but it takes from one or the other of those yards, and in each instance the cars have been taken from the industry by the industry engine of the Pennsylvania Railroad to those yards, with the exception of the Federal Furnace plant, which, as stated yesterday, performs its own plant service. The Indiana Harbor Belt moves the traffic via the S. C. & S. to Calumet Park, where it crosses the S. C. & S. and leaves the S. C. & S. at that point. I cannot tell you as to the operation of the Indiana Harbor Belt in moving these cars to points in Illinois. There have been several changes there recently, but the present chief clerk at our 108th Street yard is H. O. Cook. Mr. Kelly is chief clerk at the Colehour yard. (Tr. 2304.) I presume there would be competition between the Indiana Harbor Belt and the Pennsylvania for traffic at the industries mentioned on the River Branch moving to points in the Chicago district. [fol. 1132] The Indiana Harbor Belt pays its proportion of the engine service employed in switching between these industries and the 108th Street or the 112th Street yard. (Tr. 2305.) The basis for payment is an agreed upon rate per hour for the engine service, which is divided on the basis of the cars handled for each road, and without saying positively, as far as I know it is $10.00 per engine hour. There are a number of tracks in that vicinity in both Indiana and Illinois, where there is a joint use by the Pennsylvania and Indiana Harbor, or rather, both the Indiana Harbor and the Pennsylvania reach the American Maize Products Company and Lever Brothers, both located in Indiana. The Pennsylvania serves these two. The Indiana Harbor Belt does not do switching at any plants for the joint account of it and the Pennsylvania in that territory; it does, however, at East Chicago, in the switching district (Tr. 2306), and if I remember correctly, the expense is pro rated on the same basis of $10.00 per engine hour, covering both engine and crew. Our action in handling the cars intrastate is to comply with the law, as I understand it,

but I do not know what provision. If we did not meet the rates the Indiana Harbor Belt has from those industries and points within the Chicago switching district in Illinois, I think it is the policy of the industries to use the lowest rate obtainable. (Tr. 2307.)

Cross-examination.

By Mr. Hufsmith:

As to illustrations A to O, my statement that the black lines indicated not only the customary routings but were also, in fact, the most economical routes, so far as the Pennsylvania was concerned, was based on the study to determine whether or not they were in fact more economical. (Tr. 2308-2309.) I have the information as to the engine hours employed in handling these cars to keep them [fol. 1133] intrastate, which means special service involved by the plant engines taking the cars to South Chicago, setting them off there when en route from the industry to the yard or in going to South Chicago to pick them up en route from yard to industry, Colehour yard to the industry. We have a record of the time involved by the present crews in picking up and in setting off at South Chicago while en route between Colehour and Garfield Boulevard yard in both directions. That involves the engine services, which averaged 8½ hours per day. (Tr. 2310.) No attempt was made to keep record of the time involved on account of the increased elements of service or to keep a record of the classifications at Garfield Boulevard in order to block the cars which had to be set off by the transfer engine en route to Colehour, or the time involved in putting that set-off at the head end so that it might be set off with a minimum delay. Eight and one-half hours per day is simply the time for extra engine service involved in keeping the cars out of Colehour yard. From an actual study as to whether or not the so-called natural routings operating in these illustrations are as a matter of fact more economical than any other movements, that might be made between the respective industries, I know nothing about the actual costs of either movement. (Tr. 2312.) However, I do know that it took more engine service to handle cars by the unnatural routes. I know nothing about the parts of that movement outside of the Pennsylvania, and am testifying only for the Pennsylvania.

In illustration A the Pennsylvania is a part of the movement, of course. In illustration A it handles the traffic to the East Chicago yard, and I know nothing whatever of the units of cost, the time elements, or engine hours required to move the car from East Chicago to the Barr [fol. 1134] yard of the Baltimore & Ohio Chicago Terminal. (Tr. 2313-2314.)

We have no point of interchange at our 59th Street yard with the Baltimore & Ohio Chicago Terminal, but as indicated in illustration B, a line of the Pennsylvania Railroad extends from the 59th Street yard in a southeasterly direction to the Dolton yard, and from the Dolton yard the Indiana Harbor Belt reaches the Blue Island yard, and it crosses the Pennsylvania at Dolton. That is the routing shown in illustration B from the Dolton yard to Blue Island. (Tr. 2314.) The Barr yard of the Baltimore & Ohio Chicago Terminal is not very far from the Blue Island yard of the Indiana Harbor Belt. In illustration A we delivered the shipment out of our 59th Street yard to the Baltimore & Ohio Chicago Terminal at the Homen Avenue yard, and under illustration B the Pennsylvania could have taken the car to the Dolton yard (Tr. 2315), and from the switching connection there, not now being used, it would be physically possible to deliver it to the Barr yard, but would require a great deal more engine service. There would be no loss in movement up to Dolton via the line of the Pennsylvania if it was destined for the Barr yard. If the car was to be moved from the Dolton yard to Barr yard the Pennsylvania would do it, but we do not do that. (Tr. 2316.) That is the line of the Baltimore & Ohio Chicago Terminal, running from the Dolton yard to Barr yard, and we would move over that track. Years ago we moved traffic over that route, which was discontinued because there were very few cars so handled and it was a very expensive arrangment. (Tr. 2317.) We do not deliver now at Dolton yard and let the Baltimore & Ohio Chicago Terminal take it from there to the Barr yard and thence deliver to the industry shown in illustration A, because this is an instance where, by taking the car somewhat out of route, the railroads save a considerable amount of money and engine hours. (Tr. 2317.) Answering your [fol. 1135] question as to any loss resulting after the shipment would reach the Dolton yard, I will say I do not think

the Baltimore & Ohio Chicago Terminal would take the car at Dolton yard. (Tr. 2317-2319.) If the movement was from Dolton to Barr yard we would switch it over there and from the Dolton yard to Barr yard is a distance of perhaps 2 or 2½ miles, and in illustration B from Dolton yard to Blue Island yard is perhaps a mile. The distance from Dolton yard to Barr yard is somewhat more than twice as far as the distance from Dolton yard to Blue Island yard. (Tr. 2319.) If the car moved by the Pennsylvania over the routing shown on illustration B down to Dolton yard, there would be no loss of economy in movement that far by the Pennsylvania. (Tr. 2320.) The physical connections are there to permit the switching from Dolton to Barr yard, and if it were delivered to Barr yard, that is what we would do. (Tr. 2320.) I have already testified that that could be done, but it would not be an economical arrangement. (Tr. 2321-2322.)

Examiner Faul: Why would it not be economical, Mr. Jacoby? What would be the difference in the service involved?

The Witness: For the reason it would involve a special service from Dolton yard to Barr yard by local train, whereas our regular movement from 59th Street to Homan Avenue is handled by a transfer which performs numerous other services, including interchange with the Chicago & Alton, with the Burlington at Western Avenue, and the handling of Baltimore & Ohio Chicago Terminal cars from Homan Avenue to Brighton Park for the Chicago & Alton, and other service which I need not mention; so that that transfer crew would have to be employed just the same, and in order to deliver certain cars to the Baltimore & Ohio Chicago Terminal at the Barr yard it would involve [fol. 1136] additional engine service. I do not know how many cars are delivered to the Baltimore & Ohio Chicago Terminal at the Homan Avenue yard point of interchange. (Tr. 2322.) Without that information it would be possible to determine the economy of delivering a car to the Baltimore & Ohio Chicago Terminal at Homan Avenue, rather than at the point indicated at the Dolton yard. (Tr. 2322-2323.) We could handle the traffic through to Homan Avenue without any increase of engine service; that is, with the engine service we now employ we could not handle the cars to Barr yard without increased engine service. We

could handle them to Dolton yard with the cuts of cars that go down to illustration B, and with the switch facility we could move those cars over that two and a fraction miles to Barr yard. (Tr. 2323.)

Recross-examination.

By Mr. Walter:

We have no industries on the S. C. & S., South of Hegewisch. We do not do any switching down to Bernice and then North to Dolton over our line. We have no point of interchange with the Baltimore & Ohio Chicago Terminal at or near Burnham or Hedgwisch. Our interchange point with that line is at East Chicago, Indiana. It is possible so far as tracks are concerned for us to move shipments to Bernice and then North to Dolton, a 1 line haul. It would be possible to put on power and move the cars that way. (Tr. 2324.) The physical layouts of the tracks are there.

Recross-examination.

By Mr. Hufsmith:

It is 6 or 7 miles from our 59th St., yard to Homan Avenue yard, and it is our track between those points. (Tr. 2325.) In illustration A, via socalled unnatural routing we take the car from 59th St., to Homan Ave., and deliver it [fol. 1137] there. We have our own line to 12th St., where the Baltimore & Ohio Chicago Terminal crosses it; and at 12th St., we enter upon the Baltimore & Ohio Chicago Terminal and proceed Westward over those tracks to Homan Avenue. (Tr. 2326.) It is not our track from 59th St., North to Homan yard. The map is all right. (Tr. 2326.) The Pennsylvania has a line known as the Panhandle, running Northward at 59th St., to about Kinzie St. The Baltimore & Ohio Chicago Terminal crosses the Panhandle in the vicinity of 72nd St., and there is a physical connection between the two at 12th St., the Pennsylvania in going to Homan Ave., uses their own rails to 12th St., where it enters on the tracks of the Baltimore & Ohio Chicago Terminal. (Tr. 2328.) It is the better part of a mile from the Panhandle tracks over to Homan Avenue yard. (Tr. 2328.) The Pennsylvania does own the road within a mile of Homan Ave., approximately. The track we do own

from 59th St., up to the point of connection to move beyond to Homan yard is about 6 miles. The total distance to Homan yard being about 7 and the car travels 7 miles up and 7 miles back, or 14 miles which subtracted from the 42 shown on illustration A makes it the short route. (Tr. 2329.)

Redirect examination.

By Mr. Davis:

The principal reason for saying that it was more economical for the Pennsylvania to use the routes designated in the illustrations as the natural routes than over those designated as unnatural, is the fact that the unnatural route in these illustrations involves a special engine service for handling 1 or 2 cars for considerable distances on main tracks and that involves engine hours which would not be involved if the cars were handled over the natural routes. (Tr. 2330.) In handling over the natural routes, it is necessary in all these illustrations to take the cars into Colehour yard; and by keeping them out of Colehour yard is what [fol. 1138] what causes these additional elements of service. (Tr. 2330.) In my judgment, the greatest factor in economical handling is volume of traffic and not distance. There are a good many factors that enter into the time employed handling interchange. For instance, as I tried to explain last night, the delivery of a car from Colehour yard to the Indiana Harbor Belt at Michigan Ave., as compared with the delivery of the same car from Colehour yard to the Belt Railway of Chicago, the distance to the Barr yard is less but there are operating reasons why it takes just as long to go there as it does to get to the Michigan Avenue yard of the Indiana Harbor Belt. Leaving the West end of Colehour yard, the conductors have to obtain permission from the train dispatcher to enter upon the main track. He proceeds westward on the West bound main track to River Branch Junction where there is a delay while crossing over. After permission is obtained for crossing over, it must also be obtained from the Junction Train Director to enter upon the Belt rails which is only granted when it is possible to obtain an uninterrupted movement over the Rock Island and the Belt crossing at the command of and subject to the Rock Island. For these

reasons that delivery uses fully as much time and sometimes more than is required to run over our own rails to Indiana Harbor and thence to Michigan Avenue yard though as before stated, the distance to the South Chicago yard is somewhat less. (Tr. 2331-2332.)

R. A. Barlow was duly sworn and testified as follows:

Direct examination.

By Mr. Davis:

I reside in Blue Island, Illinois and am train master of the Baltimore & Ohio Chicago Terminal.

Mr. Walter: We will concede Mr. Barlow's qualifications.

[fol. 1139] The witness: (continuing.) We handle the transfer traffic involved in this case in regular transfer trains (Tr. 2333), which are made up the same as a train would be made up in regard to road haul movement. We have a locomotive at one end and a caboose at the other with the air connected and with a full train crew, which operates under dispatchers orders and the equivalent of dispatchers orders. There is no difference in operating that kind of a train and road haul trains. In handling these transfer trains we make no distinction as between state traffic and interstate traffic in them. Both kinds are handled in the same train; if there is that traffic to move. (Tr. 2334.) Under illustration A in Exhibit 110, the Baltimore & Ohio Chicago Terminal would receive that car originating on the Pennsylvania from it at East Chicago, Indiana. From there we would move the car in a transfer to Barr yard where it would be yarded and moved in a transfer thence to Harvey, where it would be yarded and then placed at the industry (Tr. 2335), which would be the natural route. Moving over the unnatural route shown in red, we would receive that car from the Pennsylvania at Homan Ave., yard, where it would be yarded and handled in transfer service to Barr yard, where it would be yarded and thence go in transfer to Harvey and be placed at the industry by the industry switch engine. (Tr. 2335.) Insofar as illustration A is concerned the service of our line would involve

the same number of yardings or classifications in either of the handlings and the difference in the two routes given would be the distance on the Pennsylvania Railroad and the distance on our line. Our line participated in the movement shown by illustration N in the same exhibit. On the natural movement we would receive that car at Whiting from the New York Central. We would then yard it at Whiting and handle in transfer service from there to Homan Avenue yards where it would again be yarded and then placed at the industry with the industrial engine. (Tr. 2336.) In the illustration the car actually originated at industry No. 1 on the New York Central line and terminated [fol. 1140] at No. 34 on the Baltimore & Ohio Chicago Terminal. We classified the car at Whiting, moved it in transfer service to Homan Ave., yard where it was yarded and thence handled to the industry by the industrial engine. Via the unnatural route, we would get the car from the Chicago River & Indiana at Ashland Ave., handle it from Ashland Ave., to Homan Ave., with our own power, where it is yarded and then placed at the industry by the industrial engine. Via the black route or the natural route, 2 roads would be involved. A 2 line haul, the New York Central and the Baltimore & Ohio Chicago Terminal (Tr. 2337); and via the unnatural route there would be 3 lines, the New York Central, the Chicago River & Indiana and the Baltimore & Ohio Chicago Terminal. (Tr. 2338.)

Our line was involved in illustration O; via the natural route the Pennsylvania would deliver that car to us at East Chicago, Indiana from which we would handle it in transfer service to Homan Avenue, where it would be yarded and handled from there to the industry by an industrial engine. (Tr. 2338.) And via the unnatural route, we would receive the car from the Pennsylvania at Homan Avenue where it would be yarded and there handled to the industry by an industrial engine. (Tr. 2338.) In order to keep the car out of Indiana, the extra service, if any, falls on the Pennsylvania.

Cross-examination.

By Mr. Walter:

There has never been an interchange at 59th St., between our road and the Pennsylvania and I do not know why one

has never been put in. (Tr. 2339.) I do not know that it would be much more satisfactory to have an interchange there than to have it at Homan yard on traffic moving into that territory, such as Barr yard. (Tr. 2339.)

[fol. 1141] Referring to illustration A, from Homan Avenue, we handled this car South in one of our through transfers. If we received the car at 59th St., it would be necessary to stop the transfer and pick it up and providing facilities were established there, to receive it (Tr. 2339) but with such facilities we would have eliminated the transfer of the Pennsylvania from 59th St., to Homan Ave., and the service at Homan Avenue, but I do not know whether interchange at 59th St., would be in the public interest, nor do I know that it would not. I know that in that congested territory where we operate passenger trains it would not be a good move on our part to stop our transfers to pick up at an intermediate point like the track we would put in at 59th St. We have industries on a line from Homan Avenue to Barr yard. We have an *an* industry engine (Tr. 2340) that is located in the district serving those industries, off what we term an industrial lead.

Service from the 59th St., yard could not be handled the same as we handle business to and from the industries in that neighborhood because the industry engine operating in the district does not go South of 75th St., and those cars would have to be handled to Barr yard by transfer run which would make it necessary to stop the transfer run as I stated before. Of course we would have to have a transfer one way or the other and stop it but we do not run transfers from 59th St., they run over to Homan Avenue because we do not have facilities that would require us to stop at 59th St. (Tr. 2341.) The carriers have not, to my knowledge, given attention to the suggestion of the Commission in its decision in this case originally that the carriers give study and attention to the elimination of wasteful transportation. We have a track connection with the Pennsylvania at Riverdale. If the Pennsylvania should take that car to Bernice, and turn it over to us at Riverdale, we would be in a position to receive it there if it saw [fol. 1142] fit to do that and there is no obstacle to their making the movement that way on our line or on the Pennsylvania except that between Riverdale, Dolton and Barr yard, our transfer runs are more often. We run 4 ways

out of Blue Island and of course all our transfer runs out of East Chicago to the different territories out of Blue Island cover that piece of track. (Tr. 2342.) We have track connection at Calumet Park with the Pennsylvania but there is nothing there except a Y track. There would be no place to set off or pick up cars, but all we would need would be more room. The Y is about 10 or 12 car lengths long. That line is established as main track between Hegewisch and West Hammond; we could not leave cars stored there but it is physically possible to take the cars in and take them out and make interchange there. (Tr. 2343.) There is no substantial difference in the expense whether the car is received at Homan Avenue yard and handled to Barr yard or received at East Chicago and handled to Barr yard. The distance a car moves in transfer is not important in determining cost. Our second illustration was N; the movement from Grand Crossing on the New York Central from the Republic Steel Corporation plant to the Chicago Screw Plant at Homan Avenue, which we handled from Ashland Avenue yard to Homan Avenue. The less distance from the Ashland Avenue yard than from the East Chicago yard to Homan Avenue would not make that route much more economical than handling it via the longer distance. Our yarding with us is about the same. (Tr. 2344.) We would handle the car from Ashland Avenue to Homan where it is yarded and it would be one less yarding. So far as the Baltimore & Ohio Chicago Terminal is concerned, we would possibly save a little money by that method. (Tr. 2345.) We participated in the movement shown in illustration O, being a shipment from the Republic Steel Corporation on the Calumet Branch of the Pennsylvania to the Atlas Forge Co., on our line. There [fol. 1143] are several routes so far as physical movement of the traffic is concerned open between industries No. 1 and No. 35. It appears from the map Exhibit No. 15 that the following routes could be used without building additional track; the Pennsylvania could give us that car at East Chicago, and Homan Avenue. (Tr. 2346.) We have connections with the Pennsylvania at Calumet Park, Dolton and Riverdale. It crosses our line at Forest Hill but there is no connection there. We could not interchange a car from 1 line to another at that point. The movement must be a two line haul in any event. We have only two

points of interchange with the Pennsylvania and those are at East Chicago and Homan Avenue. (Tr. 2347.) Out of the 6 connections I named, there are only 2 points where we interchange. (Tr. 2348.) That is not a representative proportion of the connections and interchanges we have throughout the district because we have more connections with the Pennsylvania than we have with other lines in Chicago. We interchange with the Indiana Harbor Belt at Michigan Avenue yards at Indiana Harbor. The Indiana Harbor Belt delivers and receives to and from the Baltimore & Ohio at Blue Island. The interchange is handled in both directions by the Indiana Harbor Belt. I am not sure that it is handled as a two line haul. (Tr. 2249.) Formerly this interchange was made at Indiana Harbor and the haul is about the same via either Indiana Harbor or the interchange at Blue Island. There is not a saving of 15 miles via the Indiana Harbor interchange route. The 2 roads run parallel almost all the way. The Indiana Harbor crosses our line at Calumet and proceeds to Indiana Harbor and under the present method, we cross at Calumet and go out to Pine Junction. A movement from an industry West of Blue Island interchanged at East Chicago to the Indiana Harbor Belt and handled by it back to the neighborhood of Blue Island would be a very unusual handling. We both serve the same industries West of [fol. 1144] Blue Island. (Tr. 2349.) From an industry on the Indiana Harbor Belt, East of Blue Island, the interchange is made by it at Blue Island by the use of our rails and formerly and now, that shipment moves into Indiana and then back if it is going to the Baltimore & Ohio Chicago Terminal. We do not make the interchange at Blue Island because we have no physical connection at Blue Island. We have to go around by the way of the Junction to make interchange at Blue Island. The distance using Blue Island Junction is about 4 miles. We would not save 25 miles by that interchange but we would save some mileage, about 12 miles, I would say. (Tr. 2350.) Blue Island to East Chicago is 11 miles. At the industries West of Blue Island, served jointly by our line and the Indiana Harbor Belt, both lines do the switching service and I do not believe there would be economy in having the service performed by a single line for the joint account of both. (Tr. 2351.) We have joint switching service to which our

line is a party; at the Sinclair Oil Co., where our line does the switching for the Indiana Harbor Belt, Pennsylvania and Elgin, Joliet & Eastern. We are compensated for that on an engine hour basis, which is, I believe, $10.00 per hour. That charge prevails generally throughout the district and I presume is regarded as equitable. It includes the crew, the fuel and everything that goes with the engine, (Tr. 2352) but excepts the rails. Our line serves the Gilbert & Bennett Wire Co., an industry West of Blue Island and the Indiana Harbor Belt also serves that company. In handling a shipment from that industry to a point on the Baltimore & Ohio, we would take the car from the industry to Barr yard by a switch crew, from there to East Chicago by a transfer crew, where it would be delivered to the Baltimore & Ohio. (Tr. 2353-2354.)

If a car from an industry on our rails not served by the [fol. 1145] Indiana Harbor Belt was going to a point on that line we would handle it from the industry to Barr yard by a switch engine; from there to East Chicago by a transfer where it would be delivered to the Indiana Harbor Belt. We do not interchange with the Indiana Harbor Belt through Blue Island Junction. From an industry on the Baltimore & Ohio, West of Blue Island Junction, we have not changed the former interchange at East Chicago to Blue Island Junction. The Indiana Harbor Belt interchanges with the Baltimore & Ohio only at Blue Island and not with the Baltimore & Ohio Chicago Terminal. The Baltimore & Ohio did not use our rails to East Chicago and make interchange there with the Indiana Harbor Belt and back to the industry. The Baltimore & Ohio left our line at Calumet and delivered to the Indiana Harbor Belt at Gibson at one time. The Baltimore & Ohio does not use our tracks to East Chicago. It connects with the Indiana Harbor Belt tracks at Indiana Harbor and they deliver in Gibson. The Baltimore & Ohio uses our tracks at Blue Island but we handle the business between it and the Indiana Harbor Belt. (Tr. 2355.) The Baltimore & Ohio delivers the car to us and we handle the business at Blue Island and from Blue Island to the Indiana Harbor Belt, Blue Island yard, it is handled by the Indiana Harbor Belt entirely. I am not positive that that is a 3 line movement.

Cross-examination.

By Mr. Hufsmith:

Referring to illustration O in Exhibit 110, we have a main track from Barr yard to the East Chicago yard which is all used. (Tr. 2356.) There is a point between Barr yard and East Chicago on that route where there is physical connection with the Pennsylvania railroad. There are few industries along that track. We have 2 between Barr yard and East Chicago and our switch engines travel from Barr yard daily or almost daily. That track is not used [fol. 1146] jointly; it is strictly a Baltimore & Ohio Chicago Terminal track. The Pennsylvania does have trackage rights thereon between state line and East Chicago. (Tr. 2357.) State line is at Hammond. The tracks are owned jointly from state line to East Chicago yard but from State line to Barr yard, is owned by the Baltimore & Ohio Chicago Terminal but the Pennsylvania, I believe, has trackage rights as far as Calumet Park. We have a connection with the Pennsylvania at Dolton which is between Barr yard and East Chicago. We used to interchange through Riverdale instead of Dolton. (Tr. 2358.) There is a track connection at Dolton and at Riverdale. There is one small industry located between Dolton and Barr yard. (Tr. 2359.)

Examination by Examiner Faul:

In our transfer service the difference in length of hauls involved in the district, from fractions of a mile to a maximum of 89 miles, would not make a great deal of difference. We compare the distance with the elements of service and the distance is of lesser importance.

Cross-examination.

By Mr. Ames:

Referring to illustration A in exhibit 110, traffic from industry No. 12 to industry No. 2 would move first over the Pennsylvania railroad and then over our line, those two lines performing through transportation service. Referring to that as the natural route which goes through the state of Indiana, and the unnatural route as that in the

state of Illinois, the latter is not the only unnatural route I have observed in connection with this traffic. Recently we have had occasion when the traffic did not follow the natural route. (Tr. 2360.) We make an effort to follow [fol. 1147] the natural route, which is the reason we have set that up with points of interchange. I believe the traffic between those two industries would invariably move via the natural route. Of course, I am not in a position to say that it always did. But it is natural to suppose it would, because that was the natural flow of business. The railroads controlled it. In the movement mentioned the traffic would first be tendered to the Pennsylvania Railroad. I do not know whether the revenue would be divided differently so far as the Pennsylvania is concerned if they turned it over to us at any point of interchange. (Tr. 2361.) The Pennsylvania has the power, in the absence of the shippers instructions, to turn the car over to us at one junction point or another. I do not think the Pennsylvania can get more revenue for itself by selecting the junction at which it will hand us the traffic, but I am not positive. Whether or not it would get the same revenue turning the car over to us at East Chicago that it would get if it turned it over to us at 59th Street or Homan Avenue, I am not qualified to answer. I do not know what either line would get in handling the cars shown in the illustration. (Tr. 2362.) The traffic has always followed the natural route so far as the Baltimore & Ohio Chicago Terminal was concerned. We did not control it. The Pennsylvania could select the junction at which it would deliver us the traffic, but after we received a car at East Chicago we handle it through the route indicated on the map. I do not know of any occasion when we did not receive traffic at East Chicago moving from industry No. 12 to industry No. 2. So far as I know, the natural route was the invariable route, but there might have been cars moving on a difference route that I would not know about. Traffic could have been moved via another route and not [fol. 1148] have been within my knowledge. (Tr. 2363.)

Referring to illustration X, I do not know how the switching rates are divided among the carriers. (Tr. 2364.) I do not know about these divisions and I do not know

whether they have a bearing on the inclination of the originating line to select particular junctions points. (Tr. 2365.)

Recross-examination.

By Mr. Walter:

The Baltimore & Ohio Chicago Terminal at Harvey serves industries exclusively, and the Indiana Harbor Belt at Blue Island serves an elevator exclusively. (Tr. 2365.) Traffic from that elevator at Blue Island would move to the Harvey industry through our interchange at Michigan Avenue, East Chicago. We do not perform that interchange at Blue Island because we have no interchange at that point. We have a physical track connection and the Indiana Harbor Belt and the Baltimore & Ohio interchange at Barr yard. I do not know why we should not do it at Blue Island junction. We own the Baltimore & Ohio Chicago Terminal track there, but I am not qualified to say who owns the Indiana Harbor Belt. (Tr. 2366.) It is physically possible to interchange there; the track connection is there and it would save approximately 12 miles. There is a delivery today by the Baltimore & Ohio to the Indiana Harbor Belt on that same track, and I suppose we could make deliveries there direct to the Indiana Harbor Belt and save a distance on the round trip possibly better than 20 miles. (Tr. 2367.)

Cross-examination.

By Mr. Shafer:

In so far as the Baltimore & Ohio is concerned, I think some of these so-called unnatural routes might possibly [fol. 1149] become the natural routes on some of this traffic. (Tr. 2367.) I do not believe the reciprocal switching between trunk lines and from industries to trunk lines has any influence on the routing of the intradistrict switching traffic.

Redirect examination.

By Mr. Davis:

We have a coordination committee that has been in existence for several years, which considers track connec-

tions and facilities to see if beneficial changes can be made (Tr. 2370-2371), and that question is a live one today, and has been since the Lowrey agreement made in 1911. Mr. Walter asked me if a committee had been appointed since that time, but the coordinating committee has been functioning for years before that.

Recoss-examination.

By Mr. Walter:

I do not know that the coordinating committee has focussed its attention on the suggestion by the commission in the switching case that the carriers investigate the question of possible economies in the use of different routes. (Tr. 2372.) I do not know whether there has been increased activity by the committee since the hearing in this case. (Tr. 2372.)

Mr. Davis: If the examiners please, in answer to the inquiry that Mr. Ames made in connection with which I said I would look into the matter, I think this will answer his inquiry as to the way the rate is divided. (Tr. 2372-2373.) I read from division sheet No. 11-H: "Where interchange is direct between originating carrier and delivering carrier the compensation is divided 50-50." That is, the total revenue is divided 50-50. When the interchange is via any of the carriers named in a three-line haul the originating carrier receives 37½ per cent, the intermediate carrier 25 [fol. 1150] per cent, and the delivering carrier 37½ per cent, and for a single-line haul the originating carrier would get 100 per cent. (Tr. 2373.) These divisions apply to the Lowrey basis. (Tr. 2374.)

F. A. Meyers sworn and testified as follows:

Direct examination.

By Mr. Davis:

Live at Hammond, Indiana, and have been connected with the Indiana Harbor Belt Railroad since about 1904 or 1905.

Mr. Walter: We will concede his qualifications.

Mr. Davis: All right.

The Witness: Am in the operating department and was a witness in the original case. Am familiar with the make-up of our transfer trains (Tr. 2375), which are made up in manner similar to and comparable with road-haul trains, having a locomotive at one end and a caboose at the other, with the air connected, complying with all safety appliance rules and regulations and working under train orders on some branches of the railroad. We make no distinction between state and interstate traffic in our transfer trains, both classes are handled in the same trains. (Tr. 2376.) The Indiana Harbor Belt begins at Indiana Harbor, Indiana, operates from that point south to Osborne, Indiana, and west from Gibson, Indiana, to Franklin Park, Illinois. We have a branch off the main line at Argo, Illinois, that operates into the stockyards. We cross the Indiana-Illinois state line at Hammond between Hammond and Calumet City. We handle these different kinds of freight, both locally within the state of Indiana and locally within the state of Illinois, and interstate between the two, [fol. 1151] and there is no difference in the way of handling either kind of freight or all kinds of freight as just described. (Tr. 2377.) Our road participated in the movement in illustration B, and these illustrations covered actual movements, those actually made. In illustration B we received the car from the Pennsylvania Railroad at Michigan Avenue yard, where it would be yarded or classified and transferred to Gibson yard, which is the normal and natural way that we would receive a car of that character. As the car actually moved we received it at Blue Island yard, the Pennsylvania delivering it direct into the yard. (Tr. 2378.)

Illustration J involves a movement by our railroad. In the natural and ordinary movement of the traffic we would receive that car at Michigan Avenue yard where it would be classified, thence transferred to Gibson and delivered to the Michigan Central at Gibson yard. As the car actually moved we did not receive it. It was handled by the Pennsylvania, the Belt and the Michigan Central. (Tr. 2379.) In illustration L the car originated at industry No. 28 at Norpaul and moved to industry No. 29 located on the Pennsylvania Railroad. Via the normal and natural route

we would receive that car from the industry adjacent to Norpaul yard, transfer it to Blue Island and classify it into a train running direct from Blue Island yard to the Pennsylvania Railroad at Indiana Harbor, which would be in the vicinity of Michigan Avenue yard, probably less than a mile north or northeast of the Michigan Avenue yard. As actually handled in order to keep the movement within the state of Illinois, we took the car from the industry to the Blue Island yard, classified it into a train to the Panhandle for the Pennsylvania, and delivered it to the Pennsylvania at Dolton or Riverdale. (Tr. 2380.) Our line participated in the movement in illustration N. We got that car from Consumers Company at McCook, [fol. 1152] Illinois, I believe, or anyhow from industry 30, and under normal method of handling a car from industry 30 to industry 31 we would classify the car at McCook, transfer it to Blue Island, classify there into a direct transfer run to the Pennsylvania or Indiana Harbor. McCook is in the vicinity of the location of industry No. 30 shown in the illustration. (Tr. 2381.) As the car was actually handled to keep it within the state of Illinois we handled it the same way up to Blue Island yard, where it was classified into a train going direct to the Panhandle at Riverdale; Riverdale and Dolton are practically the same as far as the Indiana Harbor Belt is concerned. (Tr. 2382.)

Cross-examination.

By Mr. Walter:

On page 1 of the exhibit there are 5 B movements illustrated and our line participated in all of those movements, and from the industries to and from which they moved it looks like all were grain or grain products. (Tr. 2382.) All of those industries are located on the Pennsylvania Railroad, and we would not handle any of that traffic with our own engines until delivered by the Pennsylvania Railroad out of the yard shown. In illustration B here, Blue Island yard is ours, and so far as the Indiana Harbor is concerned, it was clearly more economical to handle via the red route than on the black route. I do not know what revenue was received by either company on that two-line haul. It appears that the Indiana Harbor Belt was better

off on all of these movements than it would have been if they had taken the route through Indiana. (Tr. 2383-2384.) Via the Indiana Harbor Belt from Gibson to Franklin Park the movement would be interstate, and any movements from Calumet Park to various destinations intermediate [fol. 1153] would be intrastate movements; and it appears that all those would be more economical intrastate than our interstate movements from Indiana to Franklin Park. (Tr. 2384.) I heard the testimony of Mr. Jacoby as to the manner in which traffic is handled on the River Branch, but I do not know anything about the operation of the Pennsylvania Railroad. We do not serve any industry direct on that branch. (Tr. 2385.) We haul cars in that territory and leave them there for the Pennsylvania to handle from there on to the industries. I do not know how they are paid for them. That is handled by the accounting department. There naturally would be competition between the Indiana Harbor Belt and the Pennsylvania for that traffic from the River Branch to and from points within the Chicago district in Illinois. Whether or not our movement would be entirely an Illinois intrastate one would depend on the destination of the car or the established interchange point. If we had an established interchange point with whatever railroad to which destined in the switching district, Illinois, we would handle that as an intrastate movement. (Tr. 2386.) We would not have an established interchange point in Illinois with the Baltimore & Ohio Chicago Terminal. (Tr. 2386.) We interchange with that line at East Chicago, Indiana. We would not interchange with it at Blue Island Junction, because no interchange has been established at that point. We interchange with the Baltimore & Ohio and I could not say why we do not interchange with the Baltimore & Ohio Chicago Terminal; that is a matter for the traffic department and the higher officials of the operating department to answer, but so far as our department is concerned, I believe we stand ready to take the business there if it is offered to us. (Tr. 2387.)

Industry 28 is the Phillips Petroleum Company, but I [fol. 1154] do not know whether it is a pipe line or not. (Tr. 2387.) I do not know that a pipe line brings oil in there that does not come in by rail. That is our line from Norpaul south. As far as I know, this particular industry

is a pipe line terminal with loading racks there, but I do not know anything about the rates. From Blue Island to East Chicago our mileage is about 12 miles. (Tr. 2388.)

Cross-examination.

By Mr. Brown:

We have an arrangement whereby we handle business between Blue Island and any point west and north of there to the 108th Street yard of the Pennsylvania on the River Branch with our own power. We are handling that kind of business at the present time. It routes entirely through Illinois if it comes from points in Illinois. The Norris Grain Company and the Keystone Elevator are on that branch and the 108th Street yard of the Pennsylvania is south of those two industries.

Cross-examination.

By Mr. Ames (Tr. 2389):

As far as the Indiana Harbor Belt is concerned, the natural route indicated in the exhibit was the natural route used prior to the effective date of these rates. (Tr. 2389.) I imagine the originating line selects these routes. When we originate the traffic there is an established interchange point for it, and we select the route. The illustration of movement from industry No. 6 to industry No. 10 is contained in illustration B, showing movement as far as Pennsylvania and the Indiana Harbor Belt are concerned, and the natural route there would be through Colehour yard for classification and be delivered to us at Michigan Avenue. (Tr. 2390.) It is generally known, I think, that the classification is more expensive than the road haul. (Tr. [fol. 1155] 2390-2391.) Whether or not there would be a tendency on the part of the originating carrier to select a route which would avoid as many classifications as possible, I would not want to testify, as the Pennsylvania handled this particular car. (Tr. 2391.) When we have the selection of the route and could perform one classification over one route or three classifications over another, whether we would use the one with the one classification would depend largely on the volume of business that was moving, and the same principle would apply for one car

as for 100, although in making interchange movements volume has considerable to do with the establishment of these interchange points. (Tr. 2391.) But having the power to select the route, I imagine we would select the route which would avoid as many classifications as possible for our line, and would do that whether we had 1 car or 100. In saying I imagine so, I mean that we would or we do (Tr. 2392) when the volume warrants it; when the volume warrants it we change the routing on different shipments. My reference to volume is illustrated by this: In a movement of grain from South Chicago, if there were 100 cars of grain we would move them without classification at Calumet City yard. They would move in a solid train. (Tr. 2392.) I mean by "volume" that it sometimes avoids classification. If we had a route requiring 3 classifications and another requiring only 1, and we had power to select the route, we would take the one requiring 1 classification. (Tr. 2393.) I do not know in illustration B how the Pennsylvania moved it over the red route. The illustration shows Dolton, South Chicago, Garfield Boulevard, and 59th Street as Pennsylvania yards. Apparently traffic over that red route would pass through those four yards. (Tr. 2393.) I cannot tell why the Pennsylvania would select a route [fol. 1156] having 4 interchanges or 4 classifications, as against giving the business to us at Michigan Avenue yard, where it would have to make but 1 classification. (Tr. 2394.) I have heard that since the higher interstate rates have gone into effect, the shippers have selected the routes so as to keep the shipments within the state. I have no actual contact with that situation. We just move the cars where we are told to move them. (Tr. 2395.)

In illustration L our line originated the movement and it actually moved via the red route with 2 classifications on it. Via the black route a classification would have taken place at Michigan Avenue yard, Gibson yard, Blue Island, and at Norpaul, 4 classifications. (Tr. 2396.) The shipment via route involving 4 classifications instead of 2 is probably due to routing by the industry; routed via the Panhandle instead of routed via the Pennsylvania at Indiana Harbor. I could not say as to that transaction being the case where the shipper gave the routing and left us no election because I am not in a position to know. If the shipper told the agent he wanted that routing, the agent

would probably not ask the reason and as far as the operating men are concerned they would not know, the reason. (Tr. 2397.) I have no contact with the rates, nor the solicitation of business or the routes selected. I am just an operating man. (Tr. 2398.)

Cross-examination.

By Mr. H. J. Campbell:

Referring to illustration B and assuming the divisions to be as Mr. Davis stated them, I could not answer whether or not our line would get as much revenue for the service of classification in Blue Island yard on the red route and thence moving over to industry No. 10 as it would if the shipment had taken the route from the Michigan Avenue yard. (Tr. 2398.)

[fol. 1157] Recross-examination.

By Mr. Walter:

Taking illustration E, there is no established interchange with the Pennsylvania Railroad at 108th St. We go there to get all the traffic the Pennsylvania brings out and all it has for us it leaves there. I could not say why the traffic could not have been handled by Calumet Park to 108th St., or 112th St., instead of going on up to 59th St., and over to Garfield and then down. It may have been routed Panhandle by the shipper. If routing had been left to our line, it seems that the routing we are talking about over our line into 108th St., would be the route to take. Exhibit 110 is a Pennsylvania exhibit and not an Indiana Harbor exhibit. (Tr. 2400.)

C. L. Whiting sworn and testified as follows:

Direct examination.

By Mr. Davis:

I live in Chicago and am connected with the Chicago, Milwaukee, St. Paul & Pacific Railroad, having been with it and its predecessor 25 years. 10 being in Chicago. About

15 years of that time I spent in the operating department and the last 10 years in the Chicago District as Superintendent of terminals of that road. I am familiar with the operation of that road within the Chicago district. We operate transfer trains within the district.

Mr. Davis: How were those trains made up from an operators standpoint.

The Witness: They are made up by ——

Mr. Walter: Perhaps we can shorten this. You are asking that question of each and every witness. I assume that it was the practice throughout; the law requires it and good business practice requires it and I have no intention of challenging that statement so far as I am concerned that [fol. 1158] the switching transfers are handled that way by all of the lines.

Mr. Davis: It is agreeable to me not to go into that further if Mr. Walter and the others in the room whom he does not represent will stipulate that the switching movement (Tr. 2404) within the district here under consideration is handled by trains such as have been described by the previous operating witnesses for all the roads.

Mr. Hufsmith: I have no objection to that.

Mr. Ames: We will make that stipulation.

Mr. Shaffer: That is agreeable.

Mr. Davis: And that the interstate traffic and the intrastate traffic is handled in those trains alike—that is, in the same trains, I mean.

Mr. Walter: Indiscriminately.

Mr. Davis: Yes.

Mr. Walter: I assume that is the fact and I am willing to make your stipulation.

Cross-examination.

By Mr. Brown:

Our railroad runs West from the Union Passenger Station but runs North first about 1,000 feet, (Tr. 2405) and the Pennsylvania railroad comes in from the South. There is a track East of the Union Station over which we have run our transfer trains and over the Pennsylvania Railroad South. (Tr. 2406.) But I do not know that the Pennsylvania Railroad also uses that track going North on to our track with freight. (Tr. 2407.) You were talking

about the joint tracks. The ownership of this property from Canal Street to Western Avenue about 2½ miles, the tracks are jointly owned by the Pennsylvania and the Milwaukee Railroads, from Canal Street to Madison Street it is owned jointly and from Madison Street to Van Buren it is owned exclusively by the Pennsylvania Railroad. The Union Depot Co., has no ownership of this track I am talk- [fol. 1159] ing about. (Tr. 2408.) All of the railroads in the city of Chicago use those tracks going North, South, East or West, whatever you want to call it, but they are not Union Depot tracks. The track East of the Union Depot between the Union Depot and the River is used for freight interchange. They might use it to interchange but they do not interchange any cars at that point, but freight is handled over it. (Tr. 2409.)

J. L. FAULK was sworn and testified as follows:

Direct examination.

By Mr. Davis:

Am division Superintendent of the Chicago, Burlington & Quincy Railroad residing in Chicago, and have been connected with that company for the past 35 years, practically all of it in the operating department. There is a co-ordination committee that has worked upon these terminals for the past 15 years, of which I am a member and have been for the past 12 years. Every railroad in Chicago is a member of the co-ordination committee and the work is divided among different subcommittees. The work of the committee was active even before the switching case was heard and afterwards as well. (Tr. 2411.) The Committee's purpose is to coordinate the facilities of the entire switching district so that traffic may be handled in the most expeditious and most economical manner. It has been and is a very live subject. In the past 10 years there have been a number of changes in the manner of re-routing and handling (Tr. 2411) the traffic in accordance with the committee's recommendations. Have no particular changes in mind, although there have been quite a few where the work has been coordinated; where there were 2 lines doing the work and one would do it, and things like that. As to the

routing of freight and the handling of transfer trains, the [fol. 1160] flow of traffic governs that. As to whether or not additional track connections should be made or whether present connections should be eliminated, our committee investigates when those matters are brought to its attention and makes its recommendations to the general managers association.

Cross-examination.

By Mr. Walter:

The layout of the yards of the various carriers in Chicago was largely dictated by the requirements of traffic moving in and out of Chicago. (Tr. 2412.) Nothing in particular has been called to our attention regarding a number of suggestions made in the switching case as to how improvements might be made in the service and no particular consideration of this switching situation as far as routes go, has been given in this particular case. It has been a live subject though—everything in general. (Tr. 2413.)

Redirect examination.

By Mr. Davis:

A committee consisting of Mr. Shreeve, Mr. Atwill and myself has been studying the questions raised in the decision of the commission in this case and it particularly considered several of the commission's suggestions but I did not know that was a part of this case. This committee is now studying the expeditious routing as well as the short routing of traffic but the communication from the coordination committee dealing with this case is still in process of study. (Tr. 2414.) It has not been concluded. A study is being made right now involving the things brought up in the switching case. The communication from the coordination committee was dated September 24, 1931. (Tr. 2415.)

Recross-examination.

By Mr. Walter:

Your question confused me but I am familiar with the [fol. 1161] matter in the memorandum referred to which brought it to my recollection. (Tr. 2415.) These sug-

gestions made in the switching case we are now considering involve the handling of traffic through what might be termed an out of the way route. We have been considering that. As to improvement in the service by carriers in our method of interchange, their routing or manner of handling cars as I said before is still in process of study and I cannot specifically tell anything about that right now until the study is completed. We have had something in mind about bettering the service (Tr. 2416) other than what we have been handling over a period of years but I have nothing specific in mind at this time. Well there were some specific instances brought up in the case that indicated that the traffic was handled in a round about way; (Tr. 2417) but I have nothing specifically in mind in that but that is the gist of the whole thing. That does not come to my mind from the memorandum. (Tr. 2417.) It is the subject as a whole. I do not know of the establishment of any new interchange points in the last 3 or 4 years in the district by any of the carriers and the according of additional trackage rights and I am not in a position to say whether a single carrier service, particularly industries where previously 2 or 3 or more had served the particular industries. That matter might or might not be considered by our committee. I do not recall having any such matter under consideration or being advised of any suggestion of that sort. (Tr. 2418.)

Cross-examination.

By Mr. Shaffer:

We have been considering the situation as a whole since the committee was formed. The committee has meetings frequently which I usually attend. I do not recall of an instance where the Burlington or Pennsylvania sought to eliminate their direct connection at Wood St., as coming before our committee.

[fol. 1162] Cross-examination.

By Mr. Brown:

On traffic from industries in the lumber district on our road going out to an industry on the Northwestern at Cragin the nearest physical connection would be via the

Belt Railway of Chicago. (Tr. 2419.) We do not have physical connections at Wood St., with the Northwestern. We have one near 16th St., and Canal Streets. We took up the connection at Wood Street about a month ago but prior to that we did use the Wood Street connection for cars for the Produce Terminal only, but on shipments going to Cragin we did not because it would be an indirect route there. The Wood Street station was the nearest connection insofar as the Northwestern is concerned for certain traffic, but not as to any traffic, because it would be a rather indirect route. The Northwestern had the right to say where it would receive its traffic. It would be too much interference to handle it through the Wood Street yard. That yard is no longer an interchange point. (Tr. 2420.) This was not a case where the delivering road exercised its right to say where it would take the traffic; it was handled according to the routing. So far as the Burlington is concerned, our haul from the lumber district to Wood St., was not a shorter movement than to the Belt Railway connection at Hawthorne. We have a direct connection with the Belt at Western Avenue where it handles it. It takes it to 26th St., and then to Cragin Junction where it is given to the Northwestern. I do not think that route is longer than it would be through Wood St. We use the connection near 16th and Canal for the Produce Terminal business only. That is business going into the new potato yard (Tr. 2421)—the Morgan Street yard. I would not say that the terminal could be used for all classes of freight because the Northwestern would not be in a position to handle all kinds of freight in their Wood Street yard and they would have [fol. 1163] to be the judges as to that. It is physically possible to deliver cars to the Northwestern at 16th & Canal; there is a railroad running there, but as to the physical condition that is a question for the Northwestern to determine. Our road uses the St. Charles Air Line in making deliveries to Michigan Central, New York Central, Rock Island and Illinois Central, and we also have some industries on the St. Charles Air Line. (Tr. 2422.)

G. F. VIVIAN recalled as a witness:

Cross-examination.

By Mr. Walter (Tr. 2423):

I was a witness in the previous hearings in this case and have been in touch with the handling of the switching case ever since it first started but I do not remember what year, I think it was about 1926. Prior to that, some changes were proposed in the switching rates on iron and steel. I was not involved in that other than in the first traffic test made, I believe in 1926. Exhibit 99 is a restatement of the September, 1926 traffic, to show loss due to the refusal of the two state commissions to permit interstate rates of 3¢, 3½¢ and 4¢ to become effective on intrastate traffic. (Tr. 2424.)

[fol. 1164] This information is shown in the lower block on page 1. (Tr. 2424.) That shows that through the action of the two state commissions, the carriers have had a loss solely because of the failure of the two state commissions to grant the increase. (Tr. 2424.) I believe that to be a fact, based on the September, 1926, traffic. It is based, as stated in my direct testimony, on the fact that September, 1926, was considered as 1/12 of the year, and that 1/12 verified and given in the testimony in the original case; the original hearing. It is not based on some more assumptions. I assume that we would have the traffic moving in that volume if we had the increased rates. I am assuming that the traffic would bear the higher rates. I stated that in my direct testimony. (Tr. 2425.) I feel warranted in saying that we would have had the traffic at the increased rates to the same extent that we would have other business in the United States today. I do not know that competition by truck and barge in the district will take more business with the increased rates than they would on the 2½ and 3-cent rates. I do not know anything about that. Under the exhibit, 99 I mean, we have had a $2,000,000 loss, that is, we would have had $2,000,000 more if we had had the increased rates. (Tr. 2426.) Under the last column showing proposed revenue you have 89 cents for a one-line haul intrastate, which is less than 2 cents per hundred pounds; we arrive at that as shown in the detail of exhibit leading through pages 2 to 8, and from there back to Ex. 11. We

have some rates that are lower than the Lowrey basis and will remain lower than that under our proposals. In Illinois we propose to keep less than 3 cents on one-line hauls on the Chicago Junction Railway, which were excepted from the decision of the Interstate Commerce Commission. [fol. 1165] (Tr. 2427.) The one-line hauls via the Junction Railroad could only be intrastate. (Tr. 2428.)

Mr. Walter: Are the carriers here asking the Commission, as a result of this investigation under Section 13, to permit any one-line hauls in the district of less than 3 cents?

A. I think perhaps that is a question for counsel.

Mr. Walter: All right, then; will counsel answer the question?

Mr. Davis: I will answer it by stating that we do not intend to permit any rate lower than the Interstate Commerce Commission has established on interstate traffic. If the decision of the Commission includes interstate traffic for one-line hauls at a 3-cent rate, then all of the Illinois and Indiana interstate traffic should go to 3 cents.

Mr. Walter: Well, I am asking here for a statement which is specific, without any ifs, ands or buts about it (Tr. 2428.)

Examiner Faul: What do the carriers propose in connection with the Chicago Junction Railway, Mr. Davis? (Tr. 2430.)

Mr. Davis: If the Examiner, please, that is what I am trying to explain, that I thought they were exempted from the order of the Interstate Commerce Commission on interstate rates. Of course they could not be involved, as Mr. Walter says, in regard to the single line, and therefore we could not, as far as the state traffic is concerned, ask for anything higher than what the Interstate Commerce Commission permitted on the Chicago Junction. (Tr. 2430.)

Mr. Walter: Did not your petition seeking this investigation, Mr. Davis, set forth that you desire to have established throughout the territory, one-line rates of 3-cents?

Mr. Davis: We asked to have, as I remember the reading of it, we asked that we be required and directed to charge on intrastate traffic in Indiana and Illinois the same [fol. 1166] rates which were applicable under the decision of the Commission in Docket 19610 on interstate traffic.

Examiner Faul: The decision of the Commission in 177 I. C. C. 669, page 697, contains the following statement: "In view of the nature of these movements"—referring to the Chicago Junction—"most of which are purely intra-plant and all intrastate in character over comparatively short hauls, they cannot be considered as representative of the movements in general throughout the district. We accordingly make no findings as to this particular traffic."

Mr. Walter: Yes, but I want to know now from the carriers, if the Examiner please, what the carriers think the Commission should find; in other words, what they propose. Are they going to treat the Chicago Junction differently from other roads? Are the shippers on that line, with a haul of one-half mile, to have one rate and shippers on other lines with a half-mile haul to have a higher rate? We are entitled to know what they propose. Discrimination is what they are trying to remove. * * * We have the Illinois Northern, the Pullman Railroad, the Chicago, West Pullman & Southern, and several lines like that, and every one of these other lines have hauls of no greater extent than those on the Chicago Junction, and in addition, the Chicago Junction is a part of the New York Central system. (Tr. 2431-2432.)

Examiner Faul: Mr. Davis, are you prepared to state at this time what the carriers propose to do in connection with the Chicago Junction Railway?

Mr. Davis: Not any further than I have, if the Examiner please. I may have a statement later—but as I understand it, in a 13th section case of this kind, unless the Interstate Commerce Commission itself passed upon the rates, we would not have any standing before the Commission.

[fol. 1167] Mr. Walter: Well, do you desire then to modify your case and to state your position now to be that you do not expect or ask relief from the Interstate Commerce Commission in connection with any one-line rates that are not—where the one-line does not have one-line interstate rates?

Mr. Davis: No, I do not. I perhaps will have a statement to make later in regard to that point. I have not given it any consideration until Mr. Walter raised it here, other than what I have stated. (Tr. 2432.)

Cross-examination of witness, continued:

Chicago Junction Railway figures are included in my Exhibit 99. (Tr. 2432.) Wherever rates shown in the proposed revenue, column No. 17, Exhibit 99, are less than 60 cents for a single-line haul, it is due to the inclusion therein of revenues to the Chicago Junction Railway which we do not propose to bring up to 3 cents, according to my understanding. But wherever there are two-line hauls less than 70 cents, it is not due to the Chicago Junction situation. The rate of 69 cents on brick and artificial stone, on page 4 of the exhibit, next to the last item, is due to the disposition of fractions, the same as 71 cents may be due to such disposition. I do not understand that we propose anything on two-line hauls other than a rate of 70 cents, and that would include business originating or terminating on the Chicago Junction Railway, two-line hauls or three-line hauls, either 70 cents or 80 cents. (Tr. 2433.)

Referring to the same rates in Indiana for two-line hauls as high as $1.30, and in Illinois as high as $1.13, there are some rates, or rather there is some traffic included in here, that was over the Lowrey basis originally, and remains over. I am not qualified to say that that is just as much [fol. 1168] a violation of Section 13 as the relationship of which the carriers complained. I would not say that an intrastate rate higher than the interstate is just as much a discrimination as if it were reversed, if it has existed in the past and no complaint has been filed about it. (Tr. 2434.) That situation is evidently permissible because it has never been declared unlawful. I do not see anything improper in having a higher intrastate rate of $1.13 for handling sheep and goats while interstate they can be handled at 3½ cents per hundred pounds or 70 cents per ton. It is wrong in having 50 cents for the intrastate and 70 cents for the interstate for the simple reason that the Interstate Commerce Commission has seen fit to increase our rates to 3, 3½ and 4 cents on the interstate traffic. The intrastate rates were not raised correspondingly.

In asking for a 13th Section order here, the fact that we have higher rates intrastate than apply interstate, it seems to me is self-explanatory. I think that is all the answer that is necessary. (Tr. 2435.) The only other answer I can make is what I said before, that there was evidently no

discrimination existing prior to the 3, 3½ and 4-cent rates and I see no reason where there should be any today with the higher intrastate rates. I do not think a difference in the length of haul should warrant a difference in the rates on switching business. Indiana intrastate, with its average haul of 6 or 7 miles, ought to pay as much as Illinois intrastate, with twice that length of haul.

Exhibit No. 100 shows the Chicago Heights situation and is identical with the previous exhibit, which related solely to the Chicago district. (Tr. 2436.) The carriers are not asking any different rates between Chicago Heights and [fol. 1169] Chicago than apply within the Chicago district in this proceeding. The exhibit shows that it is quite proper to have the same rates between Chicago Heights and the district as apply within the district, but I do not know that I am in a position to say that that is my position. I do not necessarily have a position in the matter. I received certain instructions to prepare this information and have done so. (Tr. 2437.) We propose, and I think the Commission should establish, the same rate within the district as between Chicago Heights and the district for the number of lines involved. (Tr. 2438.) I mean two-, three- and four-line hauls. There are no one-line hauls. The Baltimore & Ohio Chicago Terminal reaches Chicago Heights but it does not serve Chicago Heights. The Chicago Heights Terminal Transfer Railroad serves Chicago Heights. (Tr. 2439.) There are no industries on the Baltimore & Ohio Chicago Terminal. (Tr. 2439.) It is possible that a man could deliver carload traffic to it on team track. I say the rates between Chicago and Chicago Heights and points within the Chicago district should be the same for two-, three- and four-line hauls as for one-line, because the industries in Chicago Heights are served by the Chicago Heights Terminal Transfer Railroad. I understand that road serves all the industries. There would not be any one-line haul between Chicago Heights and Chicago, but if there was, it would be the same rule as applies within the district. If there was any one-line haul between Chicago and Chicago Heights my personal answer is that it should have the same rate as applies for one-line in Chicago. (Tr. 2440.)

The purpose of Exhibit 101 is to show loss in revenue that accrued to the carriers during the test week November

9 to 15, 1931, and the expansion of that to a year's figures, [fol. 1170] due to the failure of the state commissions to permit the interstate rates to become effective on the intrastate traffic. That assumes that the carriers would have the business on the higher rates, and we have the business. But it assumes that traffic would move on the higher rates and move by rail, too. (Tr. 2441.) I do not think there is any danger to the carriers at all from the trucks, not any more than there is any place in the United States. There certainly is truck competition, we know that, and we know that we are losing business to the trucks all over the United States, but as we raise the rates we do not necessarily increase that loss. We took November 9 to 15, 1931, as the test period for the reason that we wanted a period immediately prior to the effective date of the Interstate Commerce Commission's order, which was effective December 10th. Making the test, we asked all carriers to submit information to us, based on originating the traffic. I believe there are 35 carriers in Chicago, and all reported. (Tr. 2442.)

We gave them forms to report on. That is a copy of such form here. (Said document offered and received in evidence, marked "Exhibit No. III, Witness Vivian.") (Tr. 2443.) This is the same form that we had in the original traffic test for September, 1926. The entire blank was filled out by the originating railroad; and under the heading "Line Haul" would show whether one-, two- or three-line hauls. (Tr. 2443.) As to the Pennsylvania-Indiana Harbor Belt service on the River Junction, we would treat it as a two-line haul if both handled it, and if only one handled it from origin to destination, it would be one line. (Tr. 2444.) As to the traffic moving from an industry by the engine of the Pennsylvania Railroad, for which service the Indiana Harbor Belt pays the Pennsylvania, if for operating convenience the one switched [fol. 1171] for the account of the other, that car would have been reported by the railroad in whose accounts it lodged, and the matter of operating convenience would not enter into it at all. If the Pennsylvania switched an industry for both itself and the Indiana Harbor Belt, for operating reasons (Tr. 2444), and if they set a group of cars on the Indiana Harbor Belt track for further handling, the Indiana Harbor Belt agents would take those

cars into their records and the Pennsylvania agents would not. It would depend entirely on whether it was handled to destination by the Indiana Harbor Belt as to whether it would become a one-line, two-line or three-line proposition. (Tr. 2445.) If the Pennsylvania moved the car from an industry to 108th Street yard, and the Indiana Harbor Belt got the car there, took it out and issued its way bill, it would be treated as an Indiana Harbor Belt movement throughout, provided the engine is a joint engine that handles business of both of the railroads. If it was a Pennsylvania engine the bill would lodge and would originate in the agent's office of the Pennsylvania. My first illustration was one where, for operating convenience, one railroad does all of the switching work in the plant.

I heard in part Mr. Jacoby's testimony about how they handle the River Branch. (Tr. 2445.) I am not altogether certain as to just what Mr. Jacoby said about this Pennsylvania switch engine switching the industry and taking the car to 108th Street or 112th Street and then the Indiana Harbor Belt taking the car from there; and I am not familiar enough with the situation in that particular carrier's territory to know whether the Pennsylvania engine is operating for account of both of the railroads for operating convenience or whether it is an independent operation. If it is an independent operation it is a two-line [fol. 1172] haul, if the Indiana Harbor Belt terminates the car. (Tr. 2246-2447.) If the Pennsylvania operates there for the benefit of both carriers as a matter of operating convenience, then it becomes a joint locomotive and it becomes a one-line haul of the Indiana Harbor Belt. It was not necessary to issue instructions to the agents as to filling in the form so that we could determine what was applied. We did not issue such instructions. (Tr. 2448.) I do know what rule they applied, and have information as to whether the traffic moved from the fact that I have reports from the agents that the shipments moved, and I had personal information as to the correctness of the reports, because we had them all reviewed. (Tr. 2448.) They were reviewed by traffic representatives. I received the reports from the agents and had them checked by the traffic representatives of the various railroads, and I know that they checked all of the reports. (Tr. 2449.) The fact that agents are not in the habit of prevaricating to us, and that

they are in responsible positions, does not give me the assurance that they cannot make mistakes. (Tr. 2450.) I personally know that the traffic moved in accordance with the reports made as shown in Exhibit No. 101. I know I received the slips and the slips showed that the cars moved. Naturally I am not going out into the yard to find out whether or not a car moved. (Tr. 2450.)

We are here submitting the information we asked for, asked the reports on, and that we received the reports on when the traffic moved, and I only know that it moved according to that slip. (Tr. 2452.) I know the traffic moved. (Tr. 2453.) In so far as the Milwaukee Railroad is concerned, I went out and checked the records in part myself. Aside from the records of our own company that I checked, I had the assurance of the various agents that the traffic did move, in some instances their personal assurances. An- [fol. 1173] swering your question as to where we did not have the assurances, the answer is that we have the slips indicating that the cars moved. (Tr. 2453.) I had no other information than that. We did not take the matter of the test up with the shippers to give them an opportunity to participate in it so that no question would arise about the nature of the test, because we did not feel there would be any question about it anyway. I do remember that such request was made to counsel. (Tr. 2454.)

Page 1 of the exhibit, covering movement November 9th to 15th, does not contain any figures as to interstate movement. The $3,094.04 for one-line hauls is the difference between the present and proposed revenues shown in columns 5 and 6 on page 1, in the top block, one-line hauls (Tr. 2454); and is the difference between 31 cents per net ton revenue collected and the proposed revenue of 60 cents. This did not include Chicago Junction one-line hauls. The Chicago Junction one-line hauls are the only ones not included in the exhibit. It did not report one-line hauls. We did not ask for it. We made a different request of the Chicago Junction Railway than we did of the other lines. We exempted the one-line haul of the Chicago Junction. (Tr. 2455.) We made no other exemptions. There was no written exemption or any written instructions to the Chicago Junction Railway. (Tr. 2456.) I directed that the Chicago Junction Railway be exempted for one-line hauls, on instructions from our counsel; counsel for re-

spondents. The committees handling this case for the carriers are the same committees that functioned in the original case; practically the same personnel. (Tr. 2456.) So far as my accounting committee is concerned, Mr. Saur is chairman of it; the other two members of the Steering Committee are Mr. Hurd, connected with the Belt Rail-
[fol. 1174] way, and Mr. Murphy of the Elgin, Joliet & Eastern.

There is a Legal Committee, composed of Mr. H. I. Allen, Mr. J. R. Barse, D. P. Connell, J. N. Davis, P. F. Gault, James Stillwell, H. D. Sheehan and E. A. Smith. (Tr. 2457.) Mr. Allen is with the Elgin, Joliet & Eastern; Mr. Barse with the Belt Railway of Chicago; Mr. Connell with the New York Central, the system, if you wish to call it such; I do not know that it includes the Chicago Junction Railway, but presume it does. Mr. Davis is with the Milwaukee; Mr. Gault the Chicago & North Western; Mr. Stillwell with the Pennsylvania; Mr. Sheehan the Baltimore & Ohio Chicago Terminal, and E. A. Smith with the Illinois Central. (Tr. 2458.)

There is a traffic committee, but I cannot name the members; I do not know that I know who they are, and I could not tell you the number of members. I think I can safely say that the traffic committee consists of the Chicago Switching Committee, of which Mr. Galligan is chairman. The Elgin, Joliet & Eastern is not a member of the switching committee, but it is represented on all the committees. (Tr. 2459.)

In arriving at the present revenue in this exhibit, we computed it on the billed weight and at the rate on which the shipment moved. (Tr. 2459.) In November that was the rate prior to the increase, and in January it was excluding the 10 per cent increase. We eliminated the 10 per cent increase in order to keep the two periods on a parity. The increase shown in the exhibit pertains to the increase to the 3, 3½ and 4-cent rates, and not to the 10 per cent pool revenue. (Tr. 2460.)

We arrived at the figure $266,727.59 as the estimated annual net loss by basing it on the volume of business handled
[fol. 1175] for the year 1931, and the week's relationship to that volume of business (Tr. 2461), which was 1.16 per cent. If it had been in the normal relationship of one week to the year, that would have been 1.52, or about 1.91

per cent, or something like that. (Tr. 2462.) We feel the week was representative of the level of business that existed in 1931. We feel that if we had taken the business of the week of November 9th to 15th and gotten the revenue, that it was representative of the year's business, and yet we have to multiply by about 80 instead of 52 to get that, because the revenue of the carriers has been sliding down hill from January 1, 1931, to December 31st of the same year. (Tr. 2462.) We did not take this one week as representing 1/52 of the annual business because we tested both weeks out on the same basis and found one to be 1.16 per cent and the other 1 12 of the year; that is, the September, 1926, month was found to be 1/12 of the year on exactly the same basis that the week of November 9th to 15th was found to be 1.16 per cent. I have not gone into the cost of it at all in reaching this figure of $3,094.04. The same percentage relationship applies throughout as between the week column and the estimated annual loss that I have just given on Illinois intrastate one-line hauls. (Tr. 2463.) The percentage was not arrived at by taking an individual report as to one-line hauls and as to two-line hauls and as to three-line hauls for each of the 35 carriers. It could not be done that way because the information is not available. You have to take it as a whole. If we could have had the set up such as you speak of, we could have presented an entire year's traffic test instead of one week. In arriving at the 1.16 per cent I requested each road to give a statement of the volume of carload traffic which it originated, moving entirely within the Chicago switching district, one-, two- and [fol. 1176] three-line hauls combined. Each road has that readily available. They do not have any separation between the one-, two- and three-line hauls. The report made to me was for the individual cars. We have the entire year's volume of business by cars. (Tr. 2464.)

To get the 1.16 per cent we divided 3,533 cars moving during the week of November 9th to 15th by 303,569, being the entire year's switching business on all of the roads in Chicago. This had nothing to do with switching that is absorbed, being based on carload freight originating and terminating in the Chicago switching district; the cars handled in switching service by each of the lines. (Tr. 2465.) This did not include the one-line cars of the Chi-

cago Junction. (Tr. 2465.) The 303,569 cars are the total figures furnished me by all lines, which is all that is available. It includes all of the switching business of the Baltimore & Ohio Chicago Terminal for the year, which had the consignor and consignee both within the switching district. Most of my requests or instructions were given mostly by telephone. (Tr. 2466.) There was no way to check these figures. The figures as to total cars include all business, both state and interstate. There is no way to determine whether it is interstate or intrastate, either for Illinois or Indiana. (Tr. 2467.) The 3,533 cars are not exclusively intrastate.

Page 1 shows the total of the combined Illinois intrastate and Indiana cars as 1,592, while for the entire week we show 3,533, which includes both intrastate and interstate. We could not apply the percentages of intrastate because we did not have the information available for the year on a separation between the interstate and intrastate. (Tr. 2467-2468.) Page 2 simply gives the details so that [fol. 1177] the various steps in accumulating this data may be readily followed through the various recapitulations. (Tr. 2468.)

Page 1 of the exhibit contains all that the Commission need consider, the other being simply supporting data. Page 1 is the recapitulation, and back of it are all of the details leading up from the individual slips of the individual cars. (Tr. 2468.) From the data contained on page 2 you can compute the same loss from them that appears on page 1, and they are offered to show the entire story. (Tr. 2468.)

You cannot entirely find from page 2 the fact that 1328 cars moved intrastate in Illinois in the week of November 9th to 15th. We have shown on page 2, 261 cars as the first item there of the three, which make up the 1328, and the purpose of this information is to show what those 261 cars were and to satisfy your demand, because we knew you would ask for it if you did not get it. We felt it was necessary to show this to support page 1 of the various details, in order that the Commission might have all of the picture. I know the cars moved (Tr. 2469), and I told you some time ago the way I knew. (Tr. 2470.) The following pages of Exhibit 101 are all recapitulated into the first page.

Exhibit 102 does not differ from the preceding one other than it applies between Chicago and Chicago Heights dis-

tricts, while the other one applied within the Chicago district. I applied the same percentage there that applied in the intra-district traffic, and the only difference between Exhibit 103 and 101 is that it applies to a different week, and it excludes Ex Parte 103 revenue. There is no practical way to determine as to what extent the estimated annual net loss shown in Exhibits 101 to 104, inclusive, could be reduced by giving credit to the 10 per cent increase in the switching district, unless the 10 per cent is of such a [fol. 1178] nature that it can be applied direct to the present revenue column, in which case you could add 10 per cent of that figure, bearing in mind, of course, that the week is a different percentage of the year. (Tr. 2470-2471.) In arriving at the estimated annual net loss on page 1 of Exhibit 103, I have applied the percentage of .97, and that was determined on the same basis by taking the week's business, compared to the entire year of 1931, as stated in my direct testimony, and the week of January 11th bears the same relationship to the business of the week of November 9th that 1.16 per cent bears to .97 per cent. (Tr. 2471.) Estimating what the railroads have lost by the action of the State Commissions, based on the test week of January 11th, has nothing to do with any business moving in September, 1926. There is no connection with the previous exhibits dealing with that, other than the fact that this exhibit is built along similar lines. The data on pages 2 to 32 are offered for the same purpose as the pages in the preceding exhibit, following page 1 in that exhibit; and Exhibit 104 is offered for the same purpose as Exhibit 103, other than the one is the showing between Chicago Heights and Chicago, and the other is within the Chicago switching district. (Tr. 2472.)

The purpose of Exhibit 105 is to show the blockading of traffic, by which I mean the fact that with the increase in interstate rates, business was routed away from the interstate routes to take advantage of the lower intrastate rates, which resulted from failure of the two state commissions to recognize the interstate rates of 3, 3½ and 4 cents as an equitable basis. (Tr. 2472-2473.) I mean routed by shippers or marked to protect intrastate rates, which meant we were forced to move the business by intrastate routes. I did not say that the shippers routed all of the movements via the intrastate routes. As I just ex-

[fol. 1179] plained, they were partly routed by the shippers. (Tr. 2473.) My statement was that interstate traffic was blockaded in one of two ways, either by routing or by marking on the bill of lading to protect the intrastate rate; and that the adoption of one or the other of those two methods by the shippers was the reason for the routing via intrastate routes. My making this statement is based on the fact that I have seen possibly a dozen bills. (Tr. 2474.)

Exhibit 103 shows 1499 cars moved intrastate in each period, and in saying that each of those cars contained one or the other of the notations, either to route via or protect the intrastate rate, I have been advised that that was done, by various agents whom I cannot name. (Tr. 2475.) I would not say the agents said one or the other of those notations was on every bill, but they did say in various conferences at Chicago that the business was being routed intrastate, specifically routed, or was being marked to protect the intrastate rates. It is my understanding that the carriers would not put the notation on the bill of lading or would not route the traffic intrastate unless the shipper insisted upon that course. (Tr. 2476.) That understanding is based on the statements made to me in conferences with the agents in Chicago. (Tr. 2476.) I do not know that I can give the names of any of the railroads represented by those agents. (Tr. 2476-2477.)

Examiner Faul: I think it is important to know whether or not these shipments were routed by the shippers. I understood when the exhibits were filed by Mr. Vivian that the red line routes represented the routes that were designated by the shippers. (Tr. 2477.)

Now, if that is not the case, I think the carriers should inform us before the hearing is over, by examining the [fol. 1180] billing to see whether or not these shipments were specifically routed, and if not, whether the carriers have changed their policy in routing their shipments subsequent to December 10, 1931. I had in mind particularly Exhibit No. 110. (Tr. 2478-2479.)

The Witness (continuing): I said interstate commerce was blockaded because the shipper in every instance did one of two things, either marked on the bill of lading "Route via the intrastate route," or "Protect the intra-

state rate." I did not say that the bills I saw were only or necessarily on the week's business. I did not say 1449 cars moved under a bill of lading where the shipper had stated one or the other of those things. (Tr. 2479.) I said the blockade to interstate commerce was brought about by shippers routing the traffic via the intrastate routes, and that was established by a notation made by them on the bill of lading, and I know that because I have seen various bills and have talked to the agents, as I said before; not for this week's business. I have not said that the shipper made any statement that he required the particular movement or the particular rate to be protected, or advised the carriers of any such thing as that. (Tr. 2480.) I say interstate traffic was blockaded because the increase in the intrastate traffic in November—in January, is offset by a corresponding decrease in interstate traffic in January, which shows a different complexion in the handling of the business in the two periods. In making this statement I have taken one-line hauls against one-line hauls, two-line hauls against two-line hauls, and three-line hauls in the same way, just as my exhibit indicates, these hauls being in the aggregate. (Tr. 2481.)

The comparisons of the various volumes of traffic as to various types of commodities are shown in all of the pages [fol. 1181] in the back part of this exhibit for both periods. We give the details of intrastate traffic in Exhibit 101 and Exhibit 103 for the Chicago district. We compare, on pages 2 and 3, the two periods in the aggregate for one-line, for two-line and for three-line hauls, and have shown the proportionate decrease in the aggregate tonnage. (Tr. 2482.) I do not believe there is much varying character of the tonnage from what I can see of it, but naturally we do take that into consideration in considering the aggregate tonnage. I consider the total tonnage moved as the only factor in arriving at the statement that there has been a blockage of interstate traffic. (Tr. 2483.)

On page 2 of Exhibit 105 we show 261 cars of intrastate Illinois one-line traffic, and the details of those are given in Exhibit 101 and are the ones about which you questioned me. You will find them on page 2, 261 cars, and the various details by commodities on pages 3, 4, 5 and 6; you will find the details as to this group of cars under the various rate groups. (Tr. 2483.)

Page 2, Exhibit 101, shows 261 cars, Illinois intrastate, of which 67 were wheat. On page 2 of Exhibit 105 we show 855 cars interstate one-line, and the details of those cars are shown on page 4 of the Exhibit, 105, and no wheat is shown on that particular page. As to whether there was a blockade of wheat, you will appreciate the fact that those are both November statements, but that is all I have to go by. The January details are given in the corresponding exhibits. (Tr. 2484.) The January details are given on page 19 of Exhibit No. 105, and to show the boockade we would contrast that with the November one. The 712 cars shown on page 19 are interstate, and the 855 are interstate, and there is no wheat shown on either page 4 or page 19. I have no information to enable me to tell from what con-[fol. 1182] signors to what consignees the traffic that had moved interstate was changed to intrastate. (Tr. 2485.) I have no information in my possession to give the Commission from which it could find that business that moved interstate had been lost to somebody intrastate by reason of this rate situation. (Tr. 2485-2486.) In making this statement it is my understanding that that statement would apply to the carriers as a whole, and they are making no contention that the business of somebody interstate has been taken by somebody else intrastate, due to the change in rates; there must have been some of it, however. We make no contention as to that as a basis for setting aside the lawfully constituted rates of the State of Illinois and the State of Indiana. The purpose of Exhibit 106 is the same as 105, except that it applies between Chicago Heights and the district, instead of within the Chicago district, and Exhibit 107 is to bring down to date the conditions of the switching carriers. (Tr. 2486.) The Chicago Junction Railway is not included there because it was not a part of the studied railroads. Exhibit 107 deals only with the carriers that were in the cost study, and I have made no study of costs subsequent to 1927, so far as this case is concerned. I do not remember the number of industries on the Pullman Railroad that were studied. I could not tell without looking it up. The exhibits introduced in the original case must speak for themselves in that connection. The Illinois Northern was studied. We did not study all the short lines except the Chicago Junction Railway. (Tr. 2487.)

Mr. Walter: Has there been any objection by the Chicago Junction to giving this data? In other words, is the failure to include the Chicago Junction due to the conclusion of the committee handling the matter, or is it due to the fact [fol. 1183] that the Chicago Junction Railway does not want to come into the cost study and does not want to furnish the data?

Mr. Davis: Just a moment, if the Examiner please. I object to that question. He is getting into matters urged for the reopening of the case and a cost study. The question of a cost study on the Chicago Junction arose as many times as there were hearings in the original case, and it has arisen every time we had a meeting in this case. Our answer is still as it was originally, that the Chicago Junction was not one of the roads on which a cost study was made, and we do not propose to make one now. (Tr. 2488.)

The Witness (continuing): The purpose of Exhibit No. 108 is to show the same trunk line carriers that were in the original study, and the information therein, and is given to the Commission to show the trend of their conditions since the cost studies were made in 1927. Those are system figures, and naturally we do not have any separation of Chicago from the rest of the system; but it does show that as to the carriers that are parties to the switching study, their condition is growing worse insead of better. That is true, as a matter of fact, of every shipper in the Chicago switching district I suppose, because the entire nation is that way at the present time. I was referring to Exhibit 108. (Tr. 2489.) Exhibit 108, dealing with the trunk lines, shows total cars revenue freight, which includes switching cars, and if it moved off the Burlington onto the Milwaukee the car would be counted each time that it has been handled; there is a duplication of figures in there, but the same duplication exists year by year, and the intradistrict switching cars are included in the 14,149,865 for the year 1928, and the same with each of the other years. (Tr. 2490.) This was compiled from the annual reports to the [fol. 1184] Interstate Commerce Commission, made by these various carriers. If I had the annual reports I could tell you the items and pages they were taken from. I will be very glad to furnish this with a view to telling whether it includes intradistrict switch cars not in connection with line haul. (Tr. 2491.)

The purpose of Exhibit 109 is to show the condition of carriers in the United States, of which these roads entering Chicago are a large part. It is not so remote that I do not see why it should not be considered in connection with the issues in this case. (Tr. 2491.)

Mr. Walter: Well, what does it—what contention does it support? That the interstate rates have brought about this discrimination between state versus interstate, or what it is offered for?

Mr. Davis: I can tell one reason why it is offered, although we are not going to be confined to any one reason; that is, that as the operating ratio increases, it costs more per unit to handle the business than it does where the operating ratio decreases; that where the rate of return is high, you will find, as a rule, the operating ratio is low. What we want to show is that under these changed conditions it is costing more per unit to handle this business, and that is true of the country as a whole. (Tr. 2492.)

The Witness (continuing): Well, the same situation exists in the entire United States as exists on the individual roads, as shown in the two previous exhibits, as stated in my original testimony. I have given the switching roads involved, but not all of them, but I have given all that were involved in the original cost study. I prepared Exhibit 110 (Tr. 2493-2494), and obtained the data from which it is prepared from the various agents either of originating or [fol. 1185] terminating lines. I do not remember who may have reported them, or the terminating carrier. I believe it was a fairly even break between them. From the nature of the work it was difficult to obtain a complete statement, and I know that we have not got a complete statement. Our check list was not complete when we closed the exhibit. I believe it happens that the Pennsylvania in this was always either the originating or the delivering carrier because of its geographical layout. But the sole reason was not because the Pennsylvania's yard was bisected by a state line. (Tr. 2494.) We had no thought as to individual railroads that were involved when we asked for this information. We asked the agents of all the lines to furnish the information. We had reports from carriers other than the Pennsylvania, the New York Central and the Indiana Harbor Belt; we had both the originating and terminating lines reporting, in some cases, and we threw them out. I could

not tell how many were thrown out, but it was more than we used. I could not say how many times more, but know it was a very large volume of slips that we did not attempt to set up. The purpose of this exhibit is to show rerouting by the shipper. (Tr. 2495.)

Every one of the cars shown in this exhibit was either routed by the shipper or marked to protect the intrastate rate, and I say that because that is the basis on which the instructions were issued, and I assume they complied with my intructions, which were not in writing, but given verbally to the various agents in Chicago by the committees. The instructions were given to the railroad station agents. (Tr. 2496.) There are a large number of them in Chicago. We had various meetings with the agents at which they were told what was wanted, but I have no means of telling how many of the agents made report. These meetings were [fol. 1186] all subsequent to December 10th, and I believe in the first part of January. (Tr. 2497.) At the time of these meetings they were specifically instructed not to make reports except where the bill of lading showed routing by the shipper via the intrastate route, or a notation to protect the intrastate rate. If we have included in the exhibit shipments not moving under that sort of bill of lading, it would be incorrect to that extent, if the shipments moved interstate. If it was an ordinary intrastate movement we did not intend to include it in the exhibit. (Tr. 2498.)

The data as to the rates under the column "Actual Route" and "Normal Route" was furnished and checked by rate men. If the rate is the same via actual route and the normal route it still might be proper to include the shipments in the exhibit; but I cannot imagine there being such thing unless there happened to be some intrastate rates the same as the new interstate rates; which I have some reason to doubt. The items on page 2 of the exhibit, showing shipments between points on the Pennsylvania where the rate is 3 cents via actual route, and the same via normal route, indicate that there must be intrastate rates of 3 cents in effect today. (Tr. 2499.) This exhibit was prepared to show loss in revenue, but even though the rates via the two routes should be the same, the shipments should not necessarily be excluded from the exhibit, because if the shipment was marked to protect an intrastate rate, and it moved that way, there would be greater cost intrastate than the normal

route. I know that from the nature of the situation. I gave an illustration in connection with Exhibit A, or rather illustration A, in my direct testimony. (Tr. 2500.)

Referring to illustration N, I could not tell you at the [fol. 1187] present time whether the movement via the red line is more expensive or more costly to the carriers than via the black route. (Tr. 2501.) As a matter of fact, I cannot tell you as to any of them at the present time. The fact that the exhibit shows that 5 industries either shipped or received 784 cars out of a total of 856, is, I think, representative of what the carriers are being forced to do under the present situation in connection with the rates (Tr. 2501); that is, the larger industries naturally handle more business than others, from the nature of them; they have a larger volume of intraterminal traffic and it is only natural to assume that the larger industries would have a preponderance of the business, and I do not know that the exhibit, which is supposed to reflect the escape from interstate rates, would be any more true in the case of a large shipper than it would in the case of a smaller. I do not know that the statement reflects any different condition than would be the general condition if we had all of them. (Tr. 2502.) I made no inquiry as to cars shipped by these same industries intrastate, that are not included in this exhibit. I did not make inquiry, nor was my attention directed to the fact, that the great bulk of this business moved to and from industries served jointly by the Pennsylvania and the Indiana Harbor Belt, with the Indiana Harbor Belt's line for the movement being intrastate in its entirety, and its method of handling being intrastate. (Tr. 2502.) Aside from the movement of those particular cars via the particular routes, as shown on the map, I did not make any investigation as to cost, character of service, or anything of that kind. The way the balance of cars on pages 2, 3 and 4 moved, in general, the various diagrams would present a picture very similar to the way the cars actually moved. I did not make [fol. 1188] any investigation as to the number of different routes open under the tariffs and the physical layout from consignor to consignee. The tariffs will have to speak for themselves as to the method of routing (Tr. 2503), but from my own knowledge I could not tell what route an industry might have used where there are several routes open. (Tr.

2504.) I do not know whether these shipments could have moved wholly intrastate via lines other than the Pennsylvania. (Tr. 2504.)

In illustration A I have taken our cost elements in the cost study and placed them against the black line and against the red line, $21.78 as against $10.44. I cannot tell what it would have been if the cars on the River Branch of the Pennsylvania Railroad had moved out via the Indiana Harbor Belt from the 108th Street yard or 112th Street yard, or moved in via that route. I have not followed cars via any of those routes, and if any of those movements are in the original exhibits in this case, they will have to speak for themselves. The normal route of every Pennsylvania car shown as moving in and out of Colehour yard is because that is their main classification and train yard, and that use was built around the convenience of the Pennsylvania or the method of handling it, used prior to December 10th. (Tr. 2505.) I did not follow cars moving via other roads or ascertain that they have not changed their routes. Naturally every road varies according to its physical layout and I do not know whether the situation shown by the Pennsylvania is the situation on other roads. (Tr. 2506.) Taking Exhibit 110 showing shipments that would formerly have moved via the Pennsylvania Railroad through its Colehour yard, and which it today handles via the intrastate route, I would say that the Pennsylvania does not of its own volition handle them via [fol. 1189] the intrastate route, because it would handle the car the most economical way, which is via Colehour yard unless it receives orders to do otherwise. (Tr. 2507.)

Mr. Walter: Mr. Stillwell, will you furnish Mr. Kelly, yard clerk of the Pennsylvania at Colehour Yard, as a witness? (Tr. 2508.)

Mr. Stillwell: I do not know whether we will or not.

Mr. Walter: The statement has been made here that the shipper in all cases on the bill of lading, makes the notation and I am going to show by Mr. Kelly unless my information is entirely incorrect that within the last few days he has told some of my clients that the shipments will move via an intrastate route; that is the way they send it so that they cannot compete with the Indiana Harbor Belt.

Examiner Faul: Mr. Vivian, your testimony indicates that except in the instances where the shippers specifically route these shipments via the intrastate route, the Pennsylvania railroad would handle those same shipments over the so called natural routes.

The Witness: That is correct, Mr. Examiner. That is my understanding of it.

Mr. Walter: And that is why I want Mr. Kelly here.

The Witness (continuing): (Tr. 2509.) I think we had cars moving on the Burlington but I do not know whether we have got any of them in this exhibit or not. I do not know of a change of routing on the Burlington to avoid application of interstate rates in the Chicago district or on the Illinois Central. I do not know anything about any of them other than has been furnished to me by the various roads and that is shown in Exhibit 110. My information as to the natural routes shown on the various charts was furnished by the station agents. (Tr. 2510.) I cannot tell what agent gave me the information as to illustration. A. I do not know whether it was the originating or the terminating man who gave it. The information was [fol. 1190] given me on the form. I haven't the blank forms. A large number of these forms were furnished and I may be able to get two or three of the blanks. There may have been during the period of these reports movements of cars via other routes than those shown in Exhibit 110 and the illustrations in the exhibit naturally are selected illustrations to a certain extent but I would not say that they are horrible examples. (Tr. 2511.) The operating representatives of each road reviewed the setups or the slips and checked the routes in each instance to make sure that the information had been furnished us correctly on both the normal and actual movements. (Tr. 2512.) I would not say that out of the many reports we had we picked out the illustrations which would best show that somebody, somewhere or some time would use the intrastate route rather than the interstate route. We actually know that these cars move and we have seen fit to illustrate 334 of them, and we complained because the shipper used the intrastate route. I do not know that it is a matter of concern whether the Indiana Harbor Belt or the Pennsylvania should handle this traffic, there are some of these where the same railroads handle it but they handle it in

different ways, (Tr. 2513) and we complain because they did not use the Pennsylvania, an interstate route, when there was an intrastate route open to them. (Tr. 2514.)

Examination by Examiner Faul:

The 334 cars mentioned are those represented in the illustrations, A to O, that is 334 cars out of a total of 856 referred to in pages 1 to 4. We did not follow any particular method in selecting the 334 cars. (Tr. 2514.) We had other illustrations drawn but on account of the expense of reproduction we limited the number to the 14 illustrations used. (Tr. 2514-2515.) I would say that the other illustrations would give more or less the same general [fol. 1191] picture as to the difference in the length of haul between the intrastate and interstate routes as shown in these illustrations; and, if anything, the unnatural route would be longer than the natural route on those which we have omitted. In the selection of the illustrations we tried to get the different types of movement and refrained from reporting movements which were similar in character such as illustration A. We might have had other movements to other points where the two routes, both the natural and the unnatural, were of similar character. We have omitted these and have tried to confine ourselves to a few illustrations that would be typical of the entire situation. We have only a record of 856 cars that moved state and interstate, during the period from December 10, 1931, to March 31, 1932, and I do not know what proportion of the entire movement that represents. (Tr. 2515.) We had 3,533 cars in November; that was the total of interstate and intrastate traffic originating and terminating for 1 week in the Chicago Switching District, and in the four months' period we did not have all of them because our check list indicated there were roads that had not reported and we have no one line haul cars of the Chicago Junction Railway. Referring to Exhibit 99, the figures under column estimated annual net loss includes items based on rates in excess of 3¢, 3½¢ and 4¢ prescribed for interstate movements. That is on both the present and proposed sides, Mr. Examiner, there are some rates that are over the Lowrey rates in both instances. (Tr. 2516.)

Referring to the specific items on page 4, the $1.13 rate referred to by Mr. Walter is a two line haul and under the

interstate basis would be only 70¢ and we are not asking for a higher intrastate basis than the 3¢, 3½¢ and 4¢ rates. (Tr. 2517.) There is some traffic included in the original [fol. 1192] test not affected by the decision; that is, it was over the Lowrey basis and it remains on the same level. I cannot tell you what that is but there is a group here "over Lowrey". (Tr. 2518.)

Examiner Faul: But the contention as to the former rates, the rates below the Lowrey basis would be raised to the Lowrey basis and those in excess of the Lowrey basis would be brought down to the general level.

Mr. Davis: That is correct.

Examiner Faul: Is that still your contention, Mr. Davis?

Mr. Davis: Yes it is, if your honor please. That might mean that from a team track it would not be affected by the Lowrey basis. I do not think they are according to the order of the Commission. We wanted certain team tracks excepted; there are other team tracks which the carriers desire to have on the same basis as at present.

Examiner Faul: Therefore, they should not have been included in this exhibit.

Mr. Davis: No, that is correct. They should not have been included.

The Witness (continuing): In both of the exhibits or in all three of the exhibits, there are cars of that character. You will find one here showing $1.20 and another 74¢ on page 12, Exhibit 101. (Tr. 2518.) There are others of that character that involve team track deliveries with a distance tariff applicable in one or two instances.

Recross-examination.

By Mr. Walter:

It is my understanding that the Elgin, Joliet & Eastern has reduced its rates. I do not believe that was required by the decision of the Commission. I cannot tell you why they reduced the rates.

[fol. 1193] Mr. Walter: Mr. Davis, are you going to have anybody here who can tell us that?

Mr. Davis: I had not counted on it.

Mr. Walter: I would like to have the record reveal the facts in connection with that voluntary reduction of rates which Mr. Vivian says he will be glad to have increased.

Cross-examination.

By Mr. Shaffer:

In exhibits 101 to 104 inclusive, the revenue losses shown are predicated on the assumption that all the state traffic would move on the increased rates or would continue to move if they were permitted to be increased and that all carriers operating and performing the intrastate service would eliminate their exceptions to the Lowrey basis. Exhibit 105 shows that during the period November 9 to 15, the percentage of interstate traffic was 54.94 per cent, (Tr. 2521) and for the period January 11 to 17, 50.75 per cent. I do not know the percentages of interstate and intrastate traffic in September 1926. Assuming that 40.3 per cent of the traffic in September, 1926 in the Chicago Switching District was interstate, I would still say according to the figures I show in Exhibits 105 and 106, there had been a blockade of the interstate traffic. (Tr. 2522.) If the 40.3 per cent is correct, some time in the period between September 1926 and January, 1931, the percentage of interstate traffic has increased but I would still say there has been a blockade of interstate traffic because I do not believe the September, 1926, situation is comparable with the present day situation, (Tr. 2523) in the volume of traffic or the flow of it in this business. I do not think that comparison should be made. If I had thought so, I would have made them. We used them in Exhibit 99 in order to bring the situation down to date on the old basis, in both traffic tests in order to present the situation as it exists in [fol. 1194] the volume of traffic in 1926 and the comparison of these percentages showed that change and the comparison was proper from the standpoint of comparison but not from the standpoint of the blockading of interstate traffic. (Tr. 2524.)

Examination by Examiner Faul:

I do not know whether there has been any change in the flow of interstate traffic since December 10, 1931 from the rail lines to truck movement or to water movement; not in any specific instance; I haven't any and I do not know of any. (Tr. 2525.) I do not know whether the traffic has changed since the ex parte 103 increases from rail lines to barge and truck movements.

Cross-examination.

By Mr. Brown:

The purpose of my Exhibit 105, page 1, is to show a greater proportion of traffic moving intrastate after the new rates went in than moved before. (Tr. 2525.) But it shows as to 1 line haul that the situation is reversed, and I do not know that I have any theory as to that. It is a scattered movement. I have not attempted to make any analysis as to why one line hauls are different from all others than to find that the movement is scattered. It just happened that way, I believe. I gave estimates on cost of service on the 2 lines on illustration A, switching service only and have added together the various items of service. (Tr. 2526.) I do not know that I will be followed by another witness who will testify as to the cost of service in this proceeding. (Tr. 2526.) I do not know that that particular thing is involved in this case. I understood not. It is a relationship proposition. (Tr. 2527.) It is my understanding that the measure of the Indiana and Illinois state rates is involved in so far as those rates discriminate as compared to the interstate rates and I do not know whether the measure of those rates is proper, [fol. 1195] and you have whatever I have prepared in that respect. (Tr. 2527.) In Exhibit 110, we omitted Indiana intrastate movements. I had not thought about it until you spoke of it. (Tr. 2527.) There is nothing in my testimony or exhibits concerning that phase of the case. I would excuse a higher interstate rate than one intrastate if there had been no complaint as to the former. The mere difference in two rates may or may not create discrimination. (Tr. 2528.) It depends on the situation how your rates apply, what they apply to and everything else. To illustrate, you may have two competitors with different rates in the same location, moving to the same markets and you have certainly got a discrimination in a case like that; but the mere difference in the rates without any question of competition or anything else, I do not believe would create an improper situation. (Tr. 2529.) Whether traffic moving interstate or intrastate, may have a bearing upon the cost of the service, depends entirely upon the movement. In the illustrations we gave the intrastate movement is considerably more costly than interstate.

That is, in the illustrations given there is a difference based upon whether the traffic moves state or interstate. (Tr. 2530.) I have not used 1926 cost figures as being illuminating in this case because I understand the costs are not involved and I have not testified to any costs in my direct testimony. Offhand, I do not know of any traffic movement intrastate in Indiana to which we propose or are willing to accept a rate lower than 3¢ for single line hauls. In my direct testimony the only costs I gave were those shown in illustration A which were switching costs only and they did not come under the heading of car detention as it was described in the Commission's decision. (Tr. 2530.) That cost was based on engine hour costs only; they were switching costs only. In reaching the cost figure of $20.48 we were given the various elements by operating represen- [fol. 1196] tatives and we brought them up from the switching costs that we had in the original exhibits in the case plus the information that was necessary from the operating representatives on the special service that was involved and that expense did not include anything for car maintenance, and I have offered no testimony thus far to show the cost of performing service in this district over intrastate routes either in Illinois or Indiana. (Tr. 2531.)

Cross-examination.

By Mr. Hufsmith:

In Exhibit 99, page 3, referring to single line Indiana, intrastate traffic, there are team track movements involved there. They are not all team track movements but team track traffic is included. I could not tell whether the item, pig iron blooms, covers team track movement. From the nature of the commodity, it would seem as though it would not be, but frequently you will find very queer commodities unloaded on team tracks. (Tr. 2532.)

In columns 16 and 17, we show the average revenue present and proposed per ton. Assuming that the commodities shown on page 3 do not move to a team track but are in fact one line hauls, Indiana intrastate, we are asking the Commisison to remove the discrimination now existing with the interstate rates by establishing the rates indicated in the last column on page 3. We have raised the pig iron bloom rate from 51¢ to 60¢ because 60¢ per ton

when converted per hundredweight is 3¢ and that is the interstate rate one line; (Tr. 2533) that is what the carriers did when their rate men rated them on the proposed basis. The same situation is true as to increasing the rate on sugar and syrup from 50¢ to 60¢. (Tr. 2533-2534.) The pig iron bloom rate for a 2 line haul intrastate in Indiana [fol. 1197] is left at 89¢ instead of 70¢, probably because of some team track movement in there. (Tr. 2534.) There is no change in either the present or proposed pig iron bloom rates referred to. They are both 89¢ and that is due either to team track delivery or to the fact that some peculiarity exists in connection with that particular movement of pig iron bloom. (Tr. 2535-2536.) I do not know whether it would be an intrastate movement or not. Both sides have included in this study the team track business and traffic that is moving at rates higher than the Lowrey basis and remain on that basis and I mean on both sides both the interstate and the intrastate. (Tr. 2536.) Referring to page 3 of the Exhibit, there are 20 commodities listed in 1 line, Indiana intrastate hauls and out of the 20, 14 are to be raised to the present 60¢ interstate rate for the movement. (Tr. 2536.) Taking bituminous coal, I cannot say why it was left at 12¢ when the present interstate rate is 60¢ but probably there is some peculiarity existing in connection with that particular type of commodity or particular movement. For some reason or other the traffic men or rate men have seen fit to leave coal on that basis but I do not know what enters into it. Of my own knowledge, I do not know why that was done. (Tr. 2537.) This was done by the various railroad rate men but not in conference. (Tr. 2537.) They went through according to the decisions and instructions that have been laid down by the attorneys and rated these various slips. I do not know how the 12¢ rate was established but probably by some exception as I stated before. I prepared this exhibit and that figure was given to me by some railroad and I do not know which one. There may be a clerical error in it. The railroads may have given me 60¢ on that. (Tr. 2538.) I doubt that I have at hand [fol. 1198] the data that was submitted to me when I compiled and prepared this exhibit.

Examiner Faul: Let me offer a suggestion that the carriers check over the exhibit between now and tomorrow

morning and advise whether these discrepancies between the 1, 2 and 3 line haul rates, that is, the difference between the 60, 70 and 80¢ rates, prescribed by the Commission and which they have contended for as the intrastate basis, represent an error in these exhibits or whether they are asking for a different basis.

Mr. Davis: We are not asking for a different basis. I can assure you of that right now, if the Examiner please. For single line hauls, we have asked for 3¢; 2 line, 3½¢; and for more than 2 lines, 4¢. Now, insofar as team tracks are included in the Lowrey basis, the same (Tr. 2539) basis of rates will apply to team tracks. Where team tracks are closed and are not included in the Lowrey basis, we do not ask and do not want the 3, 3½ and 4¢ for the closed team tracks and they should be eliminated from the exhibit if they are in there. If they are in there, there is evidently an error in this exhibit that Mr. Hufsmith and Mr. Vivian have been talking about and we will have it gone over and see if we can locate the errors.

Mr. Walter: I understand, Mr. Davis now to say for all of the carriers respondents herein that he proposes 3¢, 3½¢ and 4¢ without exception, except as to team tracks, is that right?

Mr. Davis: Leaving out the Chicago Junction. (Tr. 2540.)

The Witness (continuing): There is not in Exhibit 110, or any other Exhibit prepared or compiled by me showing any example of a movement wherein Indiana shippers have [fol. 1199] in anywise changed the routing of the traffic since the establishment of the interstate rates from what it was prior to that time. There is no reference to state Commissions on the cover page of Exhibit 110. (Tr. 2541.) Indiana is a portion of the Chicago Switching District. (Tr. 2542.)

A. E. Jacoby, recalled as a witness, testified as follows:

Cross-examination (continued):

By Mr. Walter:

I did not, prior to January or February, solicit the shipment and routing, of cars of billets from the Republic Steel

Corporation to the Acme Steel Company, via the Pennsylvania Railroad.

Examiner Faul: We will adjourn at this time until tomorrow morning, May 4, 1932, at 10 o'clock A. M. (Tr. 2543.)

Pursuant to adjournment, hearing reconvened at Chicago, Illinois, May 4, 1932, at 10 o'clock A. M.

G. F. VIVIAN, recalled as a witness, testified as follows:

Cross-examination.

By Mr. Cardy:

The 2nd page of Exhibit No. 99, item 35, dealing with clay, gravel, sand and stone shows 2,068 cars, but I do not know how those cars were divided as to clay, gravel, sand and stone nor do I know whether the larger movement was sand and gravel. (Tr. 2545.) The exhibit shows the average revenue is 33¢ per ton and the proposed revenue 51¢ per ton, but I have no knowledge of the present rates on that traffic other than is shown in the exhibit. The single [fol. 1200] line proposal is 60¢ instead of 51¢. I do not know whether 90 per cent of this traffic is stone, sand or gravel, nor do I know whether the proposed estimate is greatly understated. I have not considered it. (Tr. 2546.) The present average revenue per car on stone is $14.76, compared with present revenue on all traffic of $11.18 and on miscellaneous commodities of $6.99 and our proposal is for a flat rate regardless of commodities and I see no reason why the same rate should not apply to all of them. I think the proper rate for switching service is the rate per hundredweight and not a per car weight. I have not testified as to costs in my direct testimony. (Tr. 2547.)

Mr. Cardy: Well, outside of the fact that you think the same rate per hundred pounds should apply on all traffic, regardless of value, its loading or anything else, have you any other facts to suggest that might justify your position in applying exactly the same rates on low-grade commodities and high-grade commodities?

Mr. Davis: Well, just a moment; I object to that question. What we are trying to find out here is as to whether

or not the rates should be the same within the state of Illinois or Indiana, or both, as on interstate. That rate has been fixed by the Interstate Commerce Commission at 3 cents, 3½ cents and 4 cents for the various hauls, and the question is not proper cross examination in regard to any exhibit that Mr. Vivian has offered. (Tr. 2548.)

Examiner Faul: The witness may answer. (Tr. 2549.)

The Witness: I have not made any investigation into that. (Tr. 2549.) Referring to Exhibit 101, page 2, item 35 shows present revenue per car of $22.33 and proposed revenue of $33.65 in item 35. The present revenue is based on 40 cents per ton and the proposed rate is 60 cents, and as to present [fol. 1201] or proposed car revenue shown in Exhibit 101, more clearly reflecting the actual increase that will obtain on stone, sand and gravel if the proposed rates go into effect, I think columns 5 and 6 reflect, or rather, the difference between those two columns reflects the increase on any one commodity as it is reflected in the exhibit. As to items 14 and 15, page 2, Exhibit 99, showing present and proposed revenues on stone, sand, gravel and clay, being corrected as shown on page 2 of Exhibit 101, I will say these are two different statements.

Mr. Davis: Let me explain, Mr. Cardy. (Tr. 2550.)

Mr. Cardy: Will you agree, Mr. Davis, that the present and proposed revenues shown on page 2 of Exhibit 110 reflect the actual situation in so far as stone, sand and gravel are concerned?

Mr. Davis: Yes.

Mr. Cardy: All right. (Tr. 2551.)

The Witness (continuing): As to the theory that there is an unjust discrimination between the revenues as reflected on Exhibit 101 on stone, as compared with the proposed revenues or the present revenues on other commodities in interstate traffic, our proposal deals with all commodities as a whole. I have not entered into any analysis by individual commodities. I have set these things up here in order to present a complete story by commodities. (Tr. 2551-2552.) I have said before that Exhibits 99 and 101 have no relationship as to each other. One is based on September, 1926, and represents the original traffic test, and the other is the new traffic test. (Tr. 2553.) As to any

facts outside of the mere statement that all traffic moving in the district should take the same rate, or as to any other facts to justify as great a spread as indicated in the carload revenues on different commodities in the district, I [fol. 1202] would say the exhibits speak for themselves, that I have introduced. (Tr. 2556.)

Examiner Faul: Mr. Davis, in order that the record may be clear, will you make a definite statement now as to what the proposal of the carriers is in connection with the intrastate rates?

Mr. Davis: All right, if your Honor please. (Tr. 2558.) I will make a statement for the carriers, and I will ask Mr. Connell to make a statement for the Chicago Junction. The proposal of the carriers here is to apply on state business, both Indiana and Illinois, the same as the Interstate Commerce Commission has authorized on interstate business moving within the district, and those rates are 3, 3½ and 4 cents on one-, two- or three- or more line movements, respectively, and to apply to all commodities, including commodities that move below or above the Lowrey basis; but there were one or two items excepted, such as railroad equipment on its own wheels.

Examiner Faul: That is understood.

Mr. Davis: Mr. Connell will again make the statement which he made in the original hearing in regard to the proposal of the Chicago Junction. (Tr. 2559.)

Mr. Connell: I think I stated at the original hearing that the only exception the Chicago Junction proposed was on what we call an intradistrict movement, on which a charge, I believe, of $3.15 applies when the shipper furnishes the car, and $7.15 when the carrier furnishes the car, but as to movements between the two districts the Lowrey basis will apply, and that would be 3, 3½ and 4 cents. (Tr. 2560.) The only exception we are proposing from the 3, 3½ and 4-cent basis is what we call intradistrict movement. There will be an exception there from the Lowrey basis, and by [fol. 1203] intradistrict I mean, as explained at the original hearing, that the territory served by the Chicago Junction Railway was divided into 4 districts, and that a movement within any one district takes a lower rate than a movement between any two districts. I am talking about that part of the Chicago district that is served by the Chicago Junction

Railway which has within its confines the Union Stockyards district. (Tr. 2561.)

Mr. Connell: We have got what we call a zoning system in the Central Manufacturing District, as far as the Chicago Junction Railway is concerned. (Tr. 2562.) But there is no zoning system that prevails throughout the entire Chicago district (Tr. 2562), and I did not understand that anybody was advocating zoning in the Chicago district. (Tr. 2563.)

Mr. Brown: Oh, well, we are going to come to that probably.

The Witness (continuing): As to Exhibit 99, page 2, the last column there should be changed to 60 cents all the way through, excluding the Chicago Junction Railway, unless there happens to be some one-line closed teamtrack movement. (Tr. 2564.) Taking item 35, clay, gravel, sand, stone, showing proposed rate of 51 cents, and present revenue is shown at rate of 33 cents (Tr. 2564), our proposal is to ask for 60 cents per ton on that commodity on a single-line haul, and on all other commodities. We are not going to keep you down lower than the rest, or higher either, and that is the rate we are now charging on interstate shipments of sand and gravel. (Tr. 2565.)

[fol. 1204] The third item on page 1 of Exhibit 110 shows shipments of stone, sand or gravel that has been shifted from interstate to state traffic in the district, a movement from the Marblehead Lime Company; and I do not know whether it is one of the shipments that originated on the Pennsylvania that might have moved either Indiana Harbor Belt or via the Pennsylvania. It actually did move Pennsylvania and Baltimore & Ohio Chicago Terminal. (Tr. 2566.) The shipment was crushed stone. I do not know whether or not there is a stone-producing plant there or whether it was a special stone or not. I know it was billed as crushed stone, but do not know whether the Buda Company uses crushed stone. I did not investigate the circumstances requiring the movement. (Tr. 2567.) Whether or not it might have moved from an interstate point originally in Indiana over to Illinois, I know the car actually moved via an intrastate route rather than an interstate route. That movement would not necessarily be typical or one reflecting the entire situation in the district (Tr. 2567-2568); and I would ask the Commission to base a 13th Sec-

tion order against stone upon that one movement, if the same conditions were found to exist all over the district. I have not checked up all of the crushed stone movements. Other than the exhibits which I have submitted here, I have no other facts that might be helpful in determining whether or not the present state rates had any effect upon interstate traffic. (Tr. 2568.)

Cross-examination.

By Mr. Brown:

On sheet 2 of Exhibit 101, first item, referring to 67 cars of wheat at the present rate of $3.60, I cannot recall or state what that movement was. I can get it and will let you [fol. 1205] have the information later, but it will take a lot of digging to get it. (Tr. 2569.)

On sheet 5 of the same exhibit there are three items of wheat, the last one consisting of 62 cars, with a charge of $3.15 per car, and I will give you a memorandum of that one. (Tr. 2569.)

On page 16 of Exhibit 103, showing car of flour and meal, the basis is 3¾ cents per hundred pounds, with proposed rate of 6 cents per hundred pounds, and I imagine applies to a team track delivery, and it should be thrown out of the exhibit. I presume, without investigating it, that item on page 26 covering a car under the grouping "Sugar, Syrup, Glucose and Molasses," is also in the same situation, where it shows a rate of 7 cents per hundred pounds, with a proposed rate of 9 cents per hundred. (Tr. 2570.) I can find out whether, under the heading group 4 designated "Other Grain," grain screenings are included. (Tr. 2571.) But grain screenings come under class 6 of the classification which we have used, the old classification, which was "Other Mill Products." (Tr. 2571.) Charts B, F and J in Exhibit 110, showing movements from the malting plant of Schwill & Company, were all barley screenings. (Tr. 2571.) As to other illustrations in the exhibit, showing movements from Schwill & Company for their account or the account of others, but not shown on charts, I could not say they were barley screenings because I have not checked it up. (Tr. 2571.)

In answering Mr. Cardy that I thought that on all commodities switching rates should be on a per-hundred-

pound basis, I have not qualified as a rate man, and as to considering or disregarding competition, I am not qualified to speak as a rate man. (Tr. 2571-2572.)

[fol. 1206] Mr. Brown: If the Examiner please, there is one point I would like to clear up, following the statement made by Mr. Davis that team tracks that are open will take the Lowrey basis proposed, 3, 3½ and 4. I would like to know if team tracks that were open in 1928 will remain open or be reopened, if they have been closed since then.

Mr. Davis: Well, I do not know whether or not there were any that were open in 1928 that have since been closed; but it is our desire and intention that where a railroad desires to have, and has, its team tracks closed, they remain closed as far as this basis of rates is concerned; and those who do not desire that, or desire to open their team tracks, may do so. That is a matter of regulating their own property and delivering commodities coming to their own customers where they have team tracks. (Tr. 2572.)

Mr. Walter: Well, is there any difference, Mr. Davis, as between team tracks on intrastate traffic, and interstate traffic? In other words, some are open on intrastate and not open on interstate, or vice versa, within the district.

The Witness: I could not say, Mr. Walter. The tariffs will have to speak for themselves in that respect. As to justification in asking the Interstate Commerce Commission to increase the state rate on coal where there is today no movement I say I have not made any investigation by commodities. (Tr. 2577-2578.)

Examiner Faul: As I said before, in any Section 13 case, I think there is no doubt but what the reasonableness of the intrastate rate is in issue. (Tr. 2579.)

Cross-examination.

By Mr. Ames (Tr. 2579):

The only purpose of the exhibits is to compare the reve-
[fol. 1207] nue under the interstate rates with the revenue under the state rates and to cover the matter of diversion of traffic from interstate to intrastate rates. In making the exhibits we started with the individual car and carried the accumulation of data through to the exhibits that I have introduced, and have compared the revenue under in-

trastate rates with the revenue under interstate rates of 3, 3½ and 4 cents. (Tr. 2580-2581.)

Mr. Walter: I want to make the request, if the Examiners please, that Mr. Vivian furnish us with an exhibit on all fours with Exhibit 110, which will show every car or all cars moving in the same period, December 10, 1931, to March 31, 1932, between the industries shown on the exhibit, separated by routes. Exhibit 110 shows only the routes via the Pennsylvania, with three exceptions. I want an exhibit that will give us all of the cars handled by the respondents between the same industries, via any route, separated by routes, during the same period. All I want is an exhibit just like the first page of 110, that will show every car that moved from consignor 1 to consignee 2 by any route during this period. (Tr. 2581.) That is, whether handled by the Indiana Harbor Belt and some connection, or that moved via the Indiana Harbor Belt between those industries, or by any other route than that shown on the exhibit. (Tr. 2582.)

Mr. Davis: My understanding of Mr. Vivian's statement was that he threw out some because they were not routed by the shipper or that were a duplication, and if I am wrong about that, I want Mr. Vivian to correct me. (Tr. 2590.) What are the facts in that regard, Mr. Vivian?

The Witness: Our instructions were to the effect that we wanted only cars routed by the shippers, specifically, as [fol. 1208] to routing that they desired the car to move, or where they indicated on their bills of lading to protect the intrastate rate; and that is my understanding of what the agents have furnished us, and we have thrown out a large number of sheets, duplications and otherwise, from our study. (Tr. 2590.)

Examiner Faul: Mr. Walter, it seems to me that the carriers will have to stand or fall on their record. Now if you have evidence, for example, of some inaccuracies in Exhibit 110, possibly the carriers will be glad to change the exhibit.

Mr. Walter: Well, if they will take the exhibit out of the record and withdraw it and all of the testimony in connection with it, all right. If not, I want them to give me the date and the bills of lading covering every car moving from

or to the industries on that so-called Calumet River Branch and points within Illinois, and I want the routes both state and interstate. I do not want it limited.

Examiner Faul: Mr. Davis, do you desire to supplement what you have here in any manner, shape or form? (Tr. 2595.)

Mr. Davis: I may later on—that is, I will not withdraw the exhibit because I think it is very germane to this case, but I would like to confer with the carriers in regard to this traffic that has been referred to, to see how much trouble it would be to get that. I also want to go over the working sheets from which this exhibit was compiled, to see whether or not the information we asked for was what was given, and I am not in a position to answer those questions right now. We do not think counsel ought to ask for all of the shipments that moved in one month from those industries to certain other industries. I do not think the Commission ought to require that, because it might disclose business relations that would not be proper under the Act—although [fol. 1209] I feel that the Commission would have the power, in an investigation, to order that data to be submitted to the Commission. (Tr. 2596.)

Examiner Faul: Mr. Davis, will you be able to state definitely by tomorrow morning what the carriers propose to do in connection with Exhibit 110, so that we may proceed?

Mr. Davis: I will try to, if your Honor please. It depends upon how much of my time is taken up here.

Examiner Faul: Will that be satisfactory, Mr. Walter?

Mr. Walter: Surely; there is not going to be any opportunity to charge delay to me in this case, so I will make no point—tomorrow is all right, or some time today would be all right. (Tr. 2597.)

Examination by Examiner Faul:

Referring to my Exhibit 110, in stating yesterday there were different routes available, in addition to those shown by these illustrations, I did not have in mind any industries in the switching district between which there was available only an interstate route. We had some other diagrams which we drew up but did not reproduce, which show similar situations to these 14 we have presented in this exhibit, as to both the natural and unnatural routes, one relating to

an interstate movement and the other to an intrastate movement; but they are somewhat similar in character to those that are shown here, and therefore we eliminated them. (Tr. 2597-2598.) I think there were movements that involved strictly interstate traffic, where the shipper could not elect between an interstate and an intrastate movement. I cannot specify the points or the industries, other than the fact that I understand there are some Indiana Harbor Belt movements that must necessarily be made interstate on account of the industries being located on the different sides [fol. 1210] of the state line. (Tr. 2598.) Offhand I do not have in mind the commodities, or whether those shippers compete with shippers in intrastate commerce. I do not even remember the names of the industries. However, I know that there is something of that type.

Referring to Mr. Walter's question regarding inclusion of switching district cars in my exhibits, I find the Interstate Commerce Commission's instructions are silent in regard to including that type of traffic, but on investigation with our freight auditor I find that the exhibits do not include switching district cars. (Tr. 2598.) That is, in connection with Exhibit 108.

Cross-examination.

By Mr. Tholin:

My Exhibit 99 is a restatement of Exhibit 11-A in all respects, including the item of proposed revenue, and Exhibits 101 and 103 include rates and traffic corresponding to those included in Exhibits 11-A and 99, omitting the Chicago Junction Railway from Exhibits 101 and 103, but which is included in Exhibit 99 (Tr. 2599); and the proposed revenue shown in Exhibits 101 and 103 is on the basis now proposed, including the change in the rates of the Elgin, Joliet & Eastern. We have included business moving to closed team tracks in there, that should be taken out; that is true of Exhibits 99, 101 and 103; in order to show the straight rates of 60, 70 and 80 cents per ton for one-, two- and three-line hauls. The reduced rates on the Elgin, Joliet & Eastern are given effect in the proposed rates shown in Exhibits 101 and 103. (Tr. 2600.)

Mr. Walter: If the Examiner please, the first day of the hearing we discussed the question of the use of the record

in each of these cases, as far as it is germane to the issue in [fol. 1211] the other; and Mr. Davis desired an opportunity of consulting with his associates as to whether he would agree that we might make such use of the record, namely, that in 19610 the testimony would be available for use in the formal complaint case, No. 24950, and on the other hand that the testimony in the formal complaint case, No. 24950, would be a part of the record in 19610, so far as it is material to the issues in each of the respective cases; and that we would keep the cases separate, but so far as the record in either was competent, it would be used in the other, subject to Mr. Davis's right to object as to any particular testimony that was not either germane or competent. (Tr. 2601.)

Mr. Davis: And that the issues in 19610 would not be enlarged by my agreeing to such use of one record in the other case.

Mr. Walter: That is right, the issues of each case to remain as though there had not been the other case.

Mr. Davis: Yes. Now, there is one more reservation which perhaps is not necesary, but I will make it anyway, and that is, if your formal complaint No. 24950 should be delayed, or there should be some postponement of it, or some evidence to be offered in it that would cause a delay in hearing it, that delay shall not cause a delay in getting 19610 at issue and decided. I do not think you will have any objection to that.

Mr. Walter: Well, I have just this objection: Of course, the Commission will be in complete control of whether it will decide the two cases at the same time, or not. I do not want to say that I may not ask for a postponement to take testimony in my case; but if the testimony is not available when the Commission comes to decide the case, it could not use it, of course. My point is that when the testimony is taken it shall be available for use in either case, but if it [fol. 1212] is not taken, why then, of course, it cannot be used.

Examiner Faul: And you would not make a point of thaf feature?

Mr. Walter: No, I am going to try to get through with the case at this session; I want the two cases to go along together.

Examiner Faul: Is that agreeable to all parties of record? (Tr. 2602.)

Mr. Ames: It is agreeable to me.

Mr. Hufsmith: That is agreeable.

Mr. Shafer: It is agreeable.

Mr. Ames: I assume that this 19610 case will be formally closed on the record before you start taking testimony in the complaint case, Docket No. 24950.

Examiner Faul: Yes, that is the intention.

Mr. Walter: I may say that when I come to offer my testimony in 19610, I shall not duplicate it when I come to deal with the formal complaint. In other words, I am serving notice now that the testimony already taken I regard as material in some respects to our formal complaint case, and I shall not duplicate that.

Examiner Faul: The 19610 case will be formally closed before we commence with the complaint case, Docket No. 24950. (Tr. 2605.)

Mr. Shaffer: I want to make a motion that the following statement appearing on carrier's Exhibits 99 to 104, both inclusive, presented by the Witness, Vivian, be stricken from the record: "Revenue discrimination cuased by refusal of state commissions to permit present interstate rates to become effective on interstate traffic," because the statement is a mere conclusion based on various assumptions and is not supported by any facts presented.

[fol. 1213] Likewise, I want to move that the following statement appearing on Exhibits 105 and 106, be stricken out: "Showing blockading of interstate traffic due to refusal of state Commission to permit present interstate rates to become effective on intrastate traffic." (Tr. 2606.)

Examiner Faul: The record will show the motion and it will be taken under consideration. (Tr. 2607.)

Mr. Hufsmith: On behalf of the Public Service Commission of Indiana, we wish to join in the motion just made by Mr. Shaffer. (Tr. 2609.)

Examiner Faul: The motion will be taken under consideration and a ruling made before the conclusion of these hearings. (Tr. 2611.)

FRANK N. VANDERHOOF was sworn and testified as follows:

Direct examination.

By Mr. Ames:

Am the same Vanderhoof who testified in the earlier proceeding. I am still employed by the Graselli Chemical Co., at its plant at Graselli, Indiana, and have the same duties that I had when I previously testified. That plant is within the Chicago Switching District. At the time of the prior hearing, the switching operations entailed in spotting cars at our plant, were performed by the Indiana Harbor Belt Railroad and there has been no change in those operations as to the means of handling since my previous testimony. (Tr. 2613.)

J. W. BROWN was duly sworn and testified as follows:

Direct examination.

By Mr. Ames:

Am assistant traffic manager of Graselli Chemical Co., [fol. 1214] Cleveland, Ohio. Testified previously in this case, at which time I stated my traffic qualifications. I am familiar with the issues involved in this case. I have prepared or had prepared under my supervision some exhibits for introduction in this case and am prepared to vouch for the accuracy of such exhibits.

Our plant in the Chicago Switching District is located at Graselli, Indiana, about one mile Southeast. (Tr. 2614) of the center of the Indiana portion of the switching district. The plant is served by the Indiana Harbor Belt; Baltimore & Ohio Chicago Terminal; Elgin, Joliet & Eastern; Wabash, and the Pennsylvania Railroads. The switching in the Graselli plant is performed by the Indiana Harbor Belt for account of the other lines reaching the plant under an agreement between them. Exhibit 112 shows the track layout at the plant. It shows our railroad tracks inside the limits of our Graselli, Indiana, plant which consists of 12 miles of tracks laid with 80 and 90 pound rails which as of April 1, 1932, had an appraised value of

$117,533.53. In addition, we maintain and operate one track scale. (Tr. 2615.) The blue print covers our plant and its boundaries are from the Calumet River on the lower portion of the sheet to all of the remaining portion of the sheet. (Tr. 2615.) The roadways shown on the blue print in some cases cover actual roads and in others it is vacant land kept clear to allow access to all buildings but these are not designed to indicate railroad tracks. At our Graselli plant we manufacture sulphuric acid and other chemicals. Sulphuric acid is manufactured principally from sulphur. During 1930, we shipped a total of 83,862,080 pounds of sulphuric acid to points in the Indiana portion of the Chicago Switching District from our Graselli, Indiana plant. (Tr. 2616.) These shipments were wholly intrastate, moving over normal routes and [fol. 1215] were not diverted from interstate routes as illustrated by Witness Vivian. (Tr. 2616.) The present sulphuric acid rate in tank cars applying from Graselli, Indiana to points in the Indiana portion of the Chicago Switching District, is 2¢ per 100 pounds and has been in effect since October 5, 1921, except that the rates from Graselli to Hammond and Roby, Indiana were $6.50 per car of 60,000 pounds plus 14¢ per net ton on weight in excess of 60,000 pounds, which were reduced on July 1, 1922 to $5.85 for 60,000 pounds plus 12½¢ per net ton on weight in excess thereof. These per car rates were cancelled and placed on basis of 2¢ per 100 pounds effective August 4, 1923. Have prepared Exhibit 113 showing number of shipments, average weight, etc., of sulphuric acid, moving in tank cars from our Graselli, Indiana plant to points in Indiana in the Chicago Switching District. (Tr. 2617-2618.) Showing total net weight, average weight per car, rate per hundred pounds, average revenue per car as well as average revenue per car based on the carriers' proposed rate of 3¢ per hundred pounds. (Tr. 2618.) If the proposed increases are applied to this movement of acid in tank cars, the competition is so keen that such increases cannot be passed to the customers and we will necessarily have to absorb the increase and turn to other forms of transportation. These are all single line hauls in Exhibit 113. My Exhibit 114 is a statement of the destinations in the Chicago Switching District, to which we ship sulphuric acid in tank cars from our Graselli, Indiana

plant. Our intrastate business to Indiana points in the district, is by far greater importance than our interstate business in the district. (Tr. 2618-2619.) My Exhibit 115 is statement showing connections of the Indiana Harbor Belt with various railroads in the Chicago Switching District which are reached from our Graselli, Indiana plant. It shows the mileage from Graselli, [fol. 1216] via the Indiana Harbor Belt to Indiana Harbor Belt Junction with such connecting lines. My Exhibit 116 is a record of cost of operation of the American Tank line, owned and operated by the Graselli Chemical Co., for the year 1930. All our tank car shipments in the Chicago Switching District are made in our own cars which we maintain and keep under repair. For hauls to the Indiana portion of the district, we receive no allowance whatever. (Tr. 2619.) To certain points in the Chicago Switching District in Illinois, we receive an allowance of 1½¢ per mile for 25 miles both loaded and empty and on all line haul movements outside the district, we receive the same allowance; (Tr. 2620) which line haul movements are not under consideration in this case. We receive no allowance whatever on any of our single line shipments. We receive no allowance on intrastate movements. (Tr. 2620.) But we do receive an allowance on some interstate movements in the district. As to the distinction or the difference, the carriers individually publish the tariff that shows what the mileage allowance will be and on 2 line shipments from points in Indiana, for example, the allowance from Graselli to Argo, Illinois, on the Indiana Harbor Belt is made on the basis of 25 miles, at 1½¢ per mile, making a total of 75¢ for the car for the round trip. The rate in Indiana is 2¢, the interstate rate, 3¢, 3½¢ and 4¢ and the former interstate rate was 2½¢. For both single hauls and joint line hauls, our interstate rate has been increased to the full basis authorized by the decision of the Commission. (Tr. 2621.) Where we pay 2¢ per 100, we receive no allowance from the carriers. Prior to the increase, there was an interstate rate of 2¢ for a single line haul and we received no allowance on a movement under that 2¢ rate. My Exhibit 117, is a statement showing the regularity of movement of tank car loads of acid from Graselli, Indiana [fol. 1217] to points in the Chicago Switching District in Indiana with number of car days required on shipments to

such points showing an average car detention of 5.7 days. (Tr. 2622.) That is, 5.7 days consumed from the time the car left our plant until it was returned empty. (Tr. 2623.) And that covers the Indiana intrastate movements, moving on the rate of 2¢ per hundred pounds. Multiplying the average number of days detention by the cost per day would give a cost, but not really the cost to us of maintaining our equipment because we cannot run our cars to 100 per cent efficiency. We cannot have a load waiting for each car every time it comes back to the plant and we normally figure on these short hauls. If we can run the cars to 50 per cent efficiency, we will be doing very well, so if you multiply that by our cost and then double it you will arrive at the cost to us. Multiplying 5.7 days by $1.19 per day would be our minimum cost based on maximum efficiency. (Tr. 2623.) The minimum haul covered by Exhibit 117, would be about 200 feet and the maximum haul approximately 8 miles. The actual average haul is about 4 miles. Exhibit 118 is a statement of prices on sulphuric acid in tank cars in the Chicago District from 1920 to 1932 inclusive. The price shown for 1932 is the lowest I could obtain in time to have it printed in this exhibit and that price prevailed about April 25. (Tr. 2624.) Competition in the sulphuric acid business in the Chicago Switching District is very severe. We meet it from zinc smelters producing sulphuric acid as a by product in the roasting of zinc, which plants are located at Danville, Depue, Peru, La Salle, and Hillsboro, Illinois and Cuba City, Wisconsin. All these plants produce sulphuric acid as a by product in the roasting of zinc ore. We produce it entirely from sulphur, which is a direct production, with no by product involved. A price difference of 5¢ per net ton is sufficient to gain or lose a contract. If our intrastate rates to points in the Indiana [fol. 1218] portion of the Chicago District are increased as proposed by the carriers, it would be necessary for us to absorb this increase because, as we understand, no increase is contemplated in the rates from points without the district, that is, from the by product acid producing points referred to, all of which will have a rate of 9¢ per hundred to all points in the Chicago Switching District, except from Hillsboro and Cuba City, the rate is 10¢ per hundred. (Tr. 2626.) The freight that our traffic in the Indiana portion of the district will bear is distinctly limited

and our present rates are on a materially higher level, relatively than the line haul rates both to and from the Chicago Switching District. The controlling competition we have to meet in selling acid in the Chicago district is the production from the by product acid producing plants at Danville, La Salle, etc. We are not making complaint of the maintenance of lower intrastate rates than interstate rates in the state of Illinois. (Tr. 2626.) Prior to the establishment of the 2¢ intrastate switching rate in Indiana the question of the outside competition was a very important consideration as well as the extremely short hauls, the heavy loading and the fact that we furnished our cars to the carriers for nothing. (Tr. 2627.) As a result of this proce-ding, have made a study in connection with the possibility of trucking our commodity from our plant to consuming points in the Indiana portion of the switching district. (Tr. 2627.) The following is an estimate based upon our actual experience in trucking in other districts, of the cost of trucking sulphuric acid in bulk from Graselli, Indiana, to various destinations in the Indiana portion of the Chicago district; from Graselli, Indiana to Indiana Harbor, East Chicago, Hammond, etc., investment in one tractor with semi-trailor, $12,000.00. Operating cost based on 7 trips per day, 17 tons per trip, operating 20 days per [fol. 1219] month, 10 miles per trip, 70 miles per day, carrying total of 2,380 tons per month is as follows:

Labor, 60¢ per hour, 20 hours per day, 20 days per month, $240.00.

Gas, 15¢ per gallon, 4 miles per gallon, 1400 miles per month, $52.50.

Oil, 4 gallons, 500 miles at 40¢ per gallon, $4.48.

Tires, 5¢ per mile, 1400 miles, $70.00.

Repairs, 3¢ per mile, 1400 miles, $42,00.

Insurance, $240 per year, $20.00.

License, $240.00 per year, $20.00.

Depreciation, at 20 per cent, $200.00.

Return on investment, 10 per cent, $100.00.

Total monthly expense, $748.98 or 31.5¢ per net ton. (Tr. 2628.)

Our engineering department has completed a survey of a pipe line from our Graselli Indiana plant to the plant of the Empire Oil and Refining Co., East Chicago and has a

right of way for such line which will consist of 6,000 feet of 2½ inch pipe, the annual cost of operation being estimated as follows:

Capital outlay, $5,790.00 at 6%, $347.40.
Depreciation at 5 per cent, $289.50.
Repairs, $140.00.
Power, 12 H. P. for 2.4 hours per day, 365 days at 1¢ per kilowatt hour, $104.50.
Annual charge for rights of way, $25.00.
Labor, $547.50.
Total annual expense, $1,453.90. (Tr. 2629.)

Our estimated cost of transporting this acid by pipe line is approximately 4¢ per net ton under the present rail rate of 40¢ per net ton. If the rail rate is advanced to 60¢ per [fol. 1220] net ton, the cost to pipe this acid will be 24¢ per net ton under the rail rate. Although we pipe acid from some of our other plants, we have not yet constructed the proposed line principally for two reasons; first, while there is a profitable difference between rail and pipe line cost, it it not at present very great and; second, we are not desirous of unnecessarily diverting traffic from the rail lines. However, we state definitely that we will have this pipe line laid and operating within 2 weeks after the rail rate is advanced, if such an advance is ever made and once such a line is laid, it is unlikely that any subsequent reduction in the rail rate will bring this traffic back to the rail carriers. (Tr. 2630.)

We are piping and trucking acid at several other plants and these studies were made by engineers in the employ of the company based on actual experience. Our management has already approved the capital layout necessary to pipe this acid and we have every expectation of trucking it to other points in the Indiana portion of the Chicago Switching District, if the proposed increase in rates is allowed to become effective. (Tr. 2630.) If the present rates are continued, we expect to continue using the rail lines. The present rate we pay has resulted from negotiations and conferences between us and the carriers and we are satisfied to continue to pay the present rate of 2¢ per hundred, but are not satisfied to pay 3¢ and will not do so. Exhibits 112 to 118, both inclusive, were offered and received in evidence, marked "Exhibits No. 112 to 118, both inclusive, Witness Brown". (Tr. 2631.)

Examination by Examiner Faul:

Our intrastate rates under ex parte 103, were increased 10 per cent. (Tr. 2631.) We regarded the increase as a temporary one. We made our pipe line study on a 20 year [fol. 1221] basis and our truck study on a 5 year basis. The ex parte 103 increase has an expiration date and we felt that might expire even prior to the date set and therefore, we have disregarded that increase insofar as affecting our routing of traffic or diverting it to other means of transportation. It would cost us 31½¢ per ton to move our traffic by truck and 36¢ to move it by pipe line, as against the present 40¢ rail rate. We are not trucking acid in tank trucks out of our Graselli plant at the present time to any point. Our business is set up for tank car shipments and we would have to change our entire way of doing business. (Tr. 2632.) We have done that in the East, but so long as we can live with this thing, we would prefer not to do it, but if the rate is increased 50 per cent, there is no question but what our people will no longer sacrifice this saving. So far as the 4¢ per ton on pipe line is concerned, the management did not like to lay the line and go ahead with the proposition on a basis of a 4¢ per ton saving. At the present time, if the return on investment was greater, they would have done it. In fact, our engineering department is hoping that you will increase the rate so that they will have some work to do. Our average haul for interstate movements would be in excess of the mileage from Graselli, Indiana to Junctions with the Indiana Harbor Belt or the junctions with its connections as shown on Exhibit 115; that makes no allowance whatever for hauls beyond that. We have very little, if any, single line interstate movements and we must compare the single line intrastate movements with 2 line interstate. (Tr. 2633.) All of our interstate movements show minimum of 25 miles for the Indiana Harbor Belt and we are unable to say how many miles beyond on their connection. We have competition in the district both interstate and intrastate with 3 other sulphuric acid manufac- [fol. 1222] turers in the district; one at South Chicago, Illinois, one at Calumet, Illinois and the third at Hammond, Indiana. We have lost no contracts because of lower intrastate rates. The shippers at South Chicago or Calumet City, Illinois, shipping into Indiana would not necessarily compete with our intrastate rate. (Tr. 2634.) Prices of

acid generally are made by what the by product man is willing to sell for. The Chicago market is depressed due to the by product competition. (Tr. 2634.) They make so much acid and they are going to sell it and whatever market they happen to pick out in Chicago is sufficient to make the market throughout the whole territory. Our prices in other districts where we do not have by product competition are much higher. I could not say whether the industries at South Chicago and Calumet City ship into Indiana. The presumption is, however, that they do, and if so, they would have to pay the higher interstate rate as against our 2¢ intrastate rate. They are in the same relative position we are when we ship to Illinois. There is no by product producer in any part of the Chicago Switching District. All producers here make acid out of sulphur (Tr. 2635) and I do not think any of them are much better off than we are. We figure we are giving the carriers our cars for nothing in the switching service. The mileage allowance compensates us in a very small degree for the expense and it is so small that it would be a very small fraction if you tried to figure it out as a reduction from the 3½¢ rate. It would figure out about 75¢ per car. (Tr. 2636.) The time required in getting cars back to our plant would be greater than it would on intrastate shipments. (Tr. 2636.) There are no producers of by product sulphuric acid in the Chicago Switching District. Those producers are at Depue, La Salle, Peoria, Danville, and Hillsboro, Illinois and one at Cuba City, Wisconsin. The acid manufacturers in the [fol. 1223] Chicago Switching District make acid direct from sulphur, having no by product or coke product. They get acid with no residue. The by product producers ship into the Chicago District, not on the switching rates, but on line haul rates. (Tr. 2637.)

Cross-examination.

By Mr. Davis:

The by product manufacturers at La Salle have roasted zinc there for years in the manufacture of zinc spelter and obtain the acid as a by product. La Salle is probably about 100 miles from Chicago and their rate is 9¢ into the Chicago district. Our rate for distances over 25 miles to points in the Chicago district is 3½¢ for 2 mile hauls. We ship

into Calumet City but not from Graselli, Indiana to Calumet City, but from Seneca, Illinois. (Tr. 2638-2639.) Exhibit 114 shows movement from Graselli to Calumet City as we did ship to Calumet City at one time; but now we ship to Calumet City from Seneca, Illinois, on a rate of 7¢. The movement from Seneca is governed entirely by the acid they have to move and it has moved from there to Calumet City both before and after the Chicago switching rates were changed. (Tr. 2639.) The rate from Graselli, Indiana, to Calumet City had nothing to do with the movement from Seneca to Calumet City. We did ship into South Chicago. I have shown that movement and think there were half a dozen cars to South Chicago. To South Chicago, we ship from Graselli, Indiana, and we have a competitor at South Chicago. We also ship to Hammond, Indiana, from our Graselli, Indiana plant. (Tr. 2640.) I could not offhand estimate the proportion of our entire output at the Graselli plant that is shipped to points within the district whether state or interstate, but my opinion is that more than 50 per cent of our production moves to points in the Indiana portion of the district. We ship from our Graselli plant to interstate points outside of the district and to state [fol. 1224] points outside the district and those rates are materially higher than our 2¢ rate within the Indiana part of the district or our 3½¢ rate interstate. I would say more than 50 per cent of our product is shipped to points inside of the district. It is a relatively small tonnage, and of that, more than 50 per cent is shipped to points in the Indiana side of the district; (Tr. 2641) the bulk of that is shipped to the Indiana side. In Exhibit 117, showing 5.7 car detention days coupled with Exhibit 116, if we multiply that number of days by $1.19, the average cost per car you almost have to double that to get the correct amount that we are out. According to Exhibit 113, we pay the carriers car revenue of $24.59 at the present time and detention based upon the figures we have given would be about $13.50, the way I figure it, or more than one half the revenue. In making the 2¢ rate, consideration was given to the fact that we furnished our own cars. That was one of the factors considered. (Tr. 2642.) It is not to avoid capital expenditure that we have not laid the pipe line or on account of the depression; the reason is we cannot save any appreciable amount of money at the present time on the decreased rate.

The money has been appropriated and if the rate is advanced showing us sufficient return on our capital, we will proceed with it. The capital outlay for the pipe line including everything would be $5,790.00. By truck, insofar as changes in plant are concerned, there might be a few feet of line or something of that sort and something additional for the strengthening of the roads, but due to the fact that we are about to conclude a contract within the next couple of days to haul our stuff coming in by water from the East Chicago Dock Co., to our Graselli, Indiana plant, about 3½ miles, which is about our average haul in the district, at a trucking rate of less than 25¢ per ton, probably the invest- [fol. 1225] ment for strengthening roads should not properly be charged against the sulphuric acid, because it would be made to take care of this other inbound traffic. (Tr. 2643-2644.) In Exhibit 116, the item "Car repairs by railroads" $19,178.00 is the amount we paid to the railroads for repairing our cars. We did not send them to the railroad shops. They are for running repairs; for example, if a car was out on your road and something happened to it that necessitated repair to put it in condition to move, you would go ahead and repair it and bill us and that is the total amount of those bills. (Tr. 2644.) The difference between the cost of trucking, 31.5¢ and the 40¢ rail rate has not induced us to use the trucks. We are rather reluctant at all times to truck. As a general rule, it is not as nice a way of doing business. (Tr. 2644.) Our whole business, our plant and everything else is laid out on a rail basis. Sales are made on the carload unit and on the basis of the proposed saving we have not deemed it sufficient to make that investment. (Tr. 2645.) At the present 40¢ per ton rate, the 31.5¢ trucking cost would create a saving of 8.5¢ per net ton and I did not say that to increase that rate from 2¢ to 3¢ would put us out of business. We expect to be in business for a long time, but it would have the effect of diverting traffic from the rail lines because it would be an increase from 40¢ to 60¢ per net ton and the saving by truck would be 28¢ per net ton instead of 8½¢. (Tr. 2645.)

Cross-examination.

By Mr. Barse:

In Exhibit 117 the number of days in the third column represents the aggregate days required to handle the num-

ber of cars indicated in the second column; it is the total. The lowest number of days shown in the third column for [fol. 1226] handling any one car is 4, which undoubtedly involves some of the minimum hauls of 200 feet. (Tr. 2646.) I did not say that on the basis of that exhibit any 200-foot movement would require at least 4 days to handle the car, but carriers are taking that long to move the car. The exhibit shows no period less than 4 days in use. (Tr. 2646.)

Redirect examination.

By Mr. Ames:

We are not asking the carriers to repay the $13.56 per car maintenance if the 2-cent rate is continued. Payment for maintenance is not made to us any place in the country. (Tr. 2647.) We are not controlled by the Illinois acid plants, either in our price or in our ability to sell in the Chicago switching district. The arrangement to pay 25 cents per ton for movement by truck from the East Chicago Dock Company was not a movement of sulphuric acid. It consists of phosphate rock and will be extended to coal, salt and other commodities. (Tr. 2647.) I would prefer not to state the exact rate excepting to say that it is less than 25 cents per net ton. Our 31½ cent cost per ton estimated is all right. As a general rule we succeed in holding it under our estimate. The movement from East Chicago to our plant is a new one, and part of it formerly moved by rail. It is taking the place of a rail movement. We do not have any situations where we dispose of acid irrespective of the freight rate in the Chicago district. (Tr. 2648.) A fair summary of our position is that we will not pay the railroads an increase of 20 cents per ton on this commodity.

Re-examination by Examiner Faul:

We meet with keen competition in the district from by-product acid originating at the smelters in Illinois and Wis-[fol. 1227] consin, which are outside the district, and their product moves to the district on line-haul rates. We have a degree of competition with the producers who are within the district; but the controlling factor is the by-product competition; their costs are presumably lower. (Tr. 2649.) There are 4 plants within the Chicago switching district

that produce sulphuric acid, which includes our plant in Indiana, making 2 plants in Illinois and 2 in Indiana. The Indiana producers ship into Illinois. As to competing with Illinois producers within the state of Illinois, as between the various producers, as a general rule our business goes pretty much to the same customers; we have plant capacity provided for those customers, and so far as we can hear of it, our principal competition is from those outside fellows who produce by-product acid. (Tr. 2652.)

Examiner Wilbur: But they are in business competition with each other?

Mr. Ames: They are selling to the same man, and if you think that is competition, why then I will go along with your definition.

Examiner Wilbur: It is business competition. (Tr. 2653.)

Mr. Ames: Yes. (Tr. 2654.)

V. W. LANDON, duly sworn, testified as follows:

Direct examination.

By Mr. Davis:

Reside in Chicago, and am secretary of the Committee on Coordination of the Chicago terminals, and have been for 18 years. With reference to the portion of the Commission's decision in 177 I. C. C. 692, where it suggested that there was need of improvement in the handling of the vast switching business and the necessity for carriers to [fol. 1228] make proper study of the conditions for the purpose of eliminating unnecessary circuitous hauls, etc., the carriers have taken action as to that portion of the Commission's report. (Tr. 2656-2657.) We took from Exhibits 13 and 83 all cases of circuitous routes and referred them to the railroads interested in the movement. We took all industries that shippers stated were served by more than one railroad, that they thought could be switched by one of the terminal carriers, and referred those cases to the railroads involved, and asked for their criticism not only of the shippers' comment but of the carriers' comment as it

appeared in the exhibit. We have replies from all of the railroads but two. Under those replies there is nothing to indicate that there are any great savings to be brought about by adopting the methods that the shippers suggested. (Tr. 2657.) Proposals for changing or improving facilities for or manner of handling business within the Chicago switching district, coming from a railroad, is usually made through the General Managers' Association or directly to our committee, outlining the views on the proposition which is thought may save some money. Our committee investigates the proposition and usually sends out a questionnaire to all railroads to determine their present practice, and then makes a report either for or against. During the years I have been secretary we have handled a number of cases proposing changes. We have these shippers' exhibits analyzed now, that is, in full, and we are investigating methods, taking seal records, duplications, and things like that. In regard to this particular case we sent out a questionnaire and have gotten replies from all except 2 railroads (Tr. 2658), and until we get replies from these two railroads we are not exactly in a position to determine what conclusion should be reached. But the matter has received [fol. 1229] active consideration since the Commission report was put out. As a rule the matter is first taken up with the General Managers' Association. That association has various committees that work under its jurisdiction. This Coordination Committee is one of those, and handles transportation matters. There is a general committee known as the Coordination Committee, of which 27 railroads are members, and which includes all Chicago railroads except the industrial railroads, and each railroad has a representative on the committee. They are usually terminal superintendents. (Tr. 2659.) There are subcommittees of this general committee, and we have one Executive Committee, composed of 7 members, which handles all cases and assigns any subject to the subcommittees for study, but we have no standing subcommittees. The Executive Committee of 7 appoints subcommittees as the occasion arises. In this particular matter the Executive Committee appointed a committee of three, of which Mr. Shreeve is chairman, and the other members are Mr. Atwell, general manager of the Illinois Central, and Mr. Falk, superintendent of the Burlington. (Tr. 2660.) The answers to the questionnaires

sent out are addressed to me as secretary of the Coordination Committee, and when the reports are in, the subcommittee goes over them first and decides what kind of report to make, and it reports to the committee of 7, and if that committee agrees with the subcommittee's finding it passes it on to the General Managers' Association, which means all railroads will have a chance to vote on the recommendation. (Tr. 2661.) . The primary consideration in determining whether the present method or some other method should be used in handling traffic in the Chicago district, including traffic between carriers switching, etc., is economy. (Tr. 2661-2662.)

[fol.1230] Cross-examination.

By Mr. Walter:

Each railroad has a member on the Committee on Coordination. I am secretary of three committees. I report to the Committee on Coordination and to the committee of six and to the Committee of Engineers. I am secretary of the subcommittee consisting of Mr. Shreeve, Mr. Atwill and Mr. Falk. (Tr. 2662.) The matters suggested in the report of the Commission were brought to my attention in September, 1931, by J. W. Higgins, chairman of the General Managers' Association. It was then referred to the committee of seven, consisting of C. E. Taylor, of the Santa Fe, chairman (Tr. 2663); W. Atwill, general manager, Illinois Central; J. P. Falk, superintendent of the Burlington; L. C. Fritch, vice president, Rock Island; A. E. Jacoby, trainmaster, Pennsylvania; W. P. Lamb, assistant superintendent, New York Central. There are two members who have one vote, so there will be eight names; F. E. Morrow, engineer, Chicago & Western Indiana, and G. J. Shreeve, general superintendent, Belt Railway. Those two have one vote. Mr. Shreeve is on the committee of seven only in one connection. Mr. Evans, chairman of the Committee on Coordination, is ex officio a member of this committee and sits in at all meetings, and Mr. Shreeve is half a member. (Tr. 2664.) Mr. Evans is connected with the Indiana Harbor Belt and by virtue of his office as chairman of the Coordination Committee is a member of the committee of seven, and would by virtue of his office be a member of any committee that the Committee on Co-

ordination appointed. This matter was referred to the committee of seven on September 9th and it considered the matter at a meeting September 24, 1931. (Tr. 2665.) At that meeting the committee of seven appointed the subcommittee of three, consisting of Messrs. Shreeve, Atwell and Falk, which was notified of its duties on September 28th, [fol. 1231] and its first meeting was held October 5th, when it decided to give me the job of digging up what the criticisms were. Following October 5th I made copies of all allegations referred to in Exhibit 83; made tracings of the prints, those that were in your exhibits; and referred all those things to the committee. (Tr. 2666.) Then I took your exceptions on behalf of the Chicago Association of Commerce and individual industries and copied the portions referring to operating methods, and submitted all of that to the committee on October 24th. The committee then met on November 2d and at the time decided to send to the interested railroads those exhibits that they were interested in, and we got up the questionnaire that covered all of these questions in a more general way. I have two copies of that here. (Tr. 2667.)

Nothing has happened since the questionnaire was sent out except that we have received replies from all but two railroads. The two not replying are the Chicago, Burlington & Quincy and the Chicago, Indianapolis & Louisville. From these replies that have been received I reached the conclusion that no material economy would result to the carriers from adopting the suggestions that were made in the exhibits which we circulated. (Tr. 2668.) As to quicker service, the railroads explained that cars generally were moving in routes that were the most economical, even though they might be longer than other routes. In some cases we found that shippers' routing prevented cars moving via the short route, but during the course of that investigation some of that was changed. There were minor changes here and there. So far as any good is concerned in the matter or economy or in the betterment of service, nothing has resulted from this questionnaire presented to the carriers, and nothing may be expected in the consid- [fol. 1232] eration of the returns to this questionnaire that will materially lessen the cost of switching in Chicago, or materially benefit. (Tr. 2669.) We did not consider in that connection any improvement in the way of lessening the distance or the time and the use of empty cars for

loading (Tr. 2669); or a modification of the rules which would permit a shipper to load any car he had; that does not come within the purview of our committee, but it was one of the things that was suggested in the record. I know that it is in there and I think the particular case you have in mind is the American Maize, and that has been studied. It has been given some thought, but it is a big, broad question, and I do not like to say anything about it until the committee has had a change to discuss it. That has not been referred to the carriers. That comes within the purview of another committee, the American Railway Association. (Tr. 2670.) In the preparation of this data for circulation to the carriers I did not confer with the representatives of the Interstate Commerce Commission at its office here. (Tr. 2670.) I did not know that the Commission had asked anyone to do that. I read the decision, and if the Commission said there was room for improvement, or words to that effect, I missed it. Since the closing of the record in this case in 1928, and since the decision of the Commission, all that has been done with reference to the suggestions of the Commission has been the bringing of the matter before the Committee on Coordination, the appointment of a committee of which I am secretary, with no action taken up to this time except to circulate a questionnaire to which replies have been received from all but two members, and from which I cannot see that anything is held out as a hope for improvement in the service or economy in operation in the switching district. (Tr. 2671-2672.) That is, of course, economy [fol. 1233] of the kind you suggest, but the railroads are making other economies all the time. It is our business. I do not think anyone can doubt but what the railroads have been economizing to every extent since 1928; but whether the economies are keeping up with the depression or not, I do not know. There have been no substantial economies resulting in a substantial lessening of the cost of doing switching in Chicago, or brought about, considering the normal flow of traffic. (Tr. 2672.)

Cross-examination.

By Mr. Shafer:

The subcommittee of three was organized to study this particular subject, but our questionnaire did not go into

the question of abandoning interchanges now existing, with the possibility of changing the interchange of traffic. We did not study any questions as minutely as that. We leave that to the judgment of the railroads to pick the points they wish to make or can make changes. So far as individual railroads are concerned, our committee has not considered establishing different or new points of interchange (Tr. 2673); but I think interchange points are changing all of the time, every day, but not as a result of the suggestion made by the Commission; that goes on all of the time. (Tr. 2673-2674.)

Cross-examination.

By Mr. Hufsmith:

I have a copy of the questionnaire sent to the railroads by the committee of three. I took care of the preparation of the questionnaire. I drafted it and the committee went over it, checked it and approved it as I wrote it. The committee did not suggest it wanted it sent out or for me to prepare it and send it out (Tr. 2674); but they checked it. [fol. 1234] The committee determined as to whom the questionnaire should be sent, and directed it to be addressed to the terminal superintendents of the various carriers moving in and out of the Chicago district. There was some discussion about calling in the superintendents and talking with them, rather than sending out the questionnaire (Tr. 2675); but this method was decided upon as being the best to get them on record. (Tr. 2676.) In my judgment this was the best method to get them on record. In trying to eliminate circuitous routes, I think the more favorable policy is to direct a questionnaire to the carriers who participate in but a portion of the movement and let each party, with his limited knowledge, prepare an answer to the questions of that character. (Tr. 2676.) As to whether or not it would have been better to have all shippers and carriers engaged in the various movements get together and collectedly figure it out, I told you before that the committee decided first to send out the questionnaire. Now if any further questions arise that seem to require conference as among the railroads, I am sure the committee will call them together. (Tr. 2677.) If we are to cut down circuitous routes or to determine the question, I do not see how

one carrier alone can do that. A carrier having one-quarter of a haul in the district might or might not be able to determine by answering a questionnaire what might be a more advantageous routing of that merchandise between two industries in the district. (Tr. 2678.) It would have ample facilities at its command or the command of personnel to determine the fact; we all work for them. We did not suggest the cutting down of any of the circuitous routes. We are developing the facts, and we asked the carriers for information requested in the questionnaire. We asked them to comment on shippers' and carriers' criticisms as [fol. 1235] shown in Exhibit 83. (Tr. 2679.) I said that you could expect no major improvements in the situation. I cannot say whether or not the Pennsylvania Railroad, for example, made suggestions as to avoiding circuitous routings. I do not remember whether it did or not. We have called no meeting of shippers and carriers in the district to discuss this problem. I cannot say that would be a good idea. (Tr. 2680.)

Cross-examination.

By Mr. Cardy:

I said that since 1920 the carriers, in handling the traffic as a whole in the switching district, had made a reduction in expenses (Tr. 2681); that they had cut the corners, so to speak, but per unit I do not know, I do not think so. I cannot state the percentage of that reduction since 1920. We do not get that data. My opinion is that, comparing traffic conditions today with those in 1928, if we had a cost study today it would show a greater cost per unit now than then. (Tr. 2682.) If we need information as to cost of movements of traffic we ask the carriers for it, and I understand they furnished the information in the year 1928 shown in this case. (Tr. 2683.) There were a number of instances in the exhibits with reference to specific changes for the shortening of hauls which we submitted to the particular carriers concerned. (Tr. 2683.) I said we did that, but we went even further and took up the whole thing in a broader way. Regarding an interchange between the Baltimore & Ohio Chicago Terminal and Indiana Harbor Belt at Blue Island junction, it was explained, as I recall now, that the point of interchange between those two lines is the

most economical one, considering the traffic that is being hauled, and as to the 15-mile haul to East Chicago and back, if it is with the current of traffic, may or may not cost money; [fol. 1236] it all depends on how you look at it. That works with any distributing system, the same as with railroads. It is the same principle employed by department stores which have warehouses in the outskirts and haul stuff past a man's house in order to get it to the warehouse for distribution. The mail people do the same thing. It is the same principle. I do not know how the carriers computed their costs. (Tr. 2684.)

Mr. Davis: We rest our case now, in order to cut out any argument.

Mr. Walter: If the examiners please, so far as my clients are concerned, we are ready to rest in 19610 on the case as made by the carriers.

Mr. Hufsmith: The Indiana Commission rests.

Mr. Shafer: The Illinois Commission will likewise rest.

Mr. Davis: Just a moment; you do not give me a chance. I was going to ask for an adjournment at this time until ten o'clock tomorrow in order to get certain witnesses, certain testimony ready to be put in in my case in chief. (Tr. 2689.)

Mr. Walter: I thought you had rested your case before we took the recess.

Examiner Faul: Do you withdraw your statement that you rest, Mr. Davis?

Mr. Davis: I do have certain traffic witnesses whom I desire to put on, and when I made the statement that we rested it was for the purpose of allowing Mr. Walter and the rest of them to go on. As I understood, there was some argument as to whether or not they should go on, and then I asked if I could consult my witnesses to see how soon they would be ready. If I did make the statement that we rested it was with the thought that I would consult the traffic witnesses to get them ready, but did not intend to rest my case until [fol. 1237] they were put on the stand, if they could be gotten ready within a reasonable time. I have consulted with them and think we can be ready by ten o'clock tomorrow morning, so I want to withdraw my statement now that we have rested our case, if that is permissible, and agreeable, and have the opportunity for an adjournment until 10 o'clock tomorrow morning that I may be able to produce the witnesses upon whom I have counted.

Examiner Faul: I would like to ask Mr. Walter whether he has any witnesses whom he could put on in the meantime?

Mr. Walter: No, I have not. I will offer no evidence in 19610 unless there is something further presented. I do want, however, before we adjourn, to call attention to the fact that I have here numerous bills of lading of shipments covered by Exhibit 110, none of which carries either of the notations named by Mr. Vivian. They are cars covered by the exhibit. (Tr. 2691.)

Mr. Davis: Your Honor, if you want to continue with this bill of lading matter that Mr. Walter has handed to me, and ask Mr. Vivian to look at it, I would like to ask Mr. Walter if it is a fact that on each of these bills of lading the rate is shown, and is that the state rate or the interstate rate? (Tr. 2693.)

Mr. Walter: It depends; some of them there—one is a team track movement; that is interstate as well as state, the rate to the team track.

Mr. Davis: I think the record ought to show in connection with Mr. Walter's statement, that the rates are shown in the column on the bill of lading where the rate is to be shown; in other words, there is a column in the bill of lading to indicate the rate that they desire.

Mr. Walter: No, not the rate they desire, but the rate that applies, and that generally is the intrastate rate. (Tr. [fol. 1238] 2694.) The shipper routed them, naming the initial carrier and the delivering carrier, but specified no junction. (Tr. 2695.)

Here were two available routes by the Pennsylvania, and any of the connecting lines. The Pennsylvania could handle it one or two ways. It was stated here that bills of lading showed in every case a request to route via the intrastate route, a specific request. I am showing bills of lading to show that it is not there.

Mr. Davis: If your Honors please, I think we are quibbling over a technicality. I think I did make the statement that the information we asked for was in connection with the shipments where the shipper had routed them or had asked that the state rate be protected. (Tr. 2696.) Perhaps that was unfortunate, but I did not intend that the words used were to be taken as appearing somewhere on the bill of lading. I had in mind just what these bills of lading, which you have before you, indicate where the

shipper has shown the rate he wants to apply. I interpreted that as a request to protect that rate. If that rate is not applicable over an interstate route, but over a state route, it was my conclusion that it was tantamount to asking that the shipment move via the route over which the rate applies. (Tr. 2697.)

Mr. Walter: Well, now, I want to make it clear, and if you will now agree that the fact is that the shipments moved by one of two available intrastate routes, that is satisfactory to me, but I want to negative the proposition distinctly and completely that the shipments avoided the movement by the Pennsylvania Colehour yard.

Mr. Davis: I wish I were in a position to do that, but those state rates shown on the bills of lading are what pre- [fol. 1239] vent me from doing it.

Mr. Walter: Well, in every case would not the shipper show the rate on the bill of lading?

Mr. Davis: That is, the state rate, you mean? (Tr. 2697.)

Mr. Walter: Whatever the rate is. They may put in the interstate rate or the intrastate rate. Here were two routes that were open via the Pennsylvania. One was a state route between the consignor and consignee, and one was an interstate route. The record does not show, and the bills of lading do not show, which one of those two routes it was to go.

Examiner Faul: But they do show the intrastate rate.

Mr. Walter: They show the intrastate rate or the rate that applied via the intrastate route, but there was no statement on the bill of lading to protect the intrastate route or to take it off.

Examiner Faul: No, Mr. Walter, but the carriers under that notation were required to handle the shipment on the intrastate route, were they not?

Mr. Walter: Perhaps they were, Mr. Examiner, but they are complaining that we took business away from them and had them do it via a route that was not open under the tariff: that we did not want an interstate movement. (Tr. 2698.) We took an open route and paid the open rate.

Mr. Davis: I think it is very clear now on the record, if your Honor please.

Mr. Walter: Of course, I think the record shows clearly that in the instance of every one of these shipments there was an open route intrastate via the Indiana Harbor Belt,

and what I wanted Mr. Kelly for was to prove that he himself, as the agent of the Pennsylvania Railroad, was routing these shipments and sent them on the intrastate route [fol. 1240] in order to get some of the business that otherwise would go to the Indiana Harbor Belt. (Tr. 2699.)

Mr. Davis: If the Examiner please, I would like now, since Mr. Walter has made that statement, to ask him this, because I was just a little bit confused in my own mind before: As far as the Indiana Harbor Belt is concerned, there was an exception to that in regard to exchanging traffic with the Baltimore & Ohio Chicago Terminal, was there not?

Mr. Walter: But we have shown that there is an interchange with the Baltimore & Ohio Chicago Terminal without going into Indiana.

Mr. Davis: But I mean on the natural route, as we call it, not as you call it. Their interchange with the Baltimore & Ohio Chicago Terminal would be in Indiana.

Mr. Walter: On interstate traffic. (Tr. 2699.)

Mr. Davis: All right.

Mr. Connell: I think, Mr. Walter has made it perfectly clear that the shipper named the intrastate rate which the carrier was obliged to protect.

Mr. Walter: That is not the question that was presented in the exhibits at all; it is not what Mr. Vivian asked the agents to report. He asked them to report those instances —well, I will have to refer to his testimony when I get it and see exactly what he said. Mr. Davis very graciously assumes part of the burden of the mistake on the part of the carriers. (Tr. 2700.)

Mr. Davis: Mr. Shaffer and Mr. Hufsmith raised some question regarding the notations on exhibits 99 to 103 inclusive and 104 and 105. (Tr. 2700-2701.) The objectionable part of the notation on these exhibits as I recall, starts with the word, "caused"—"by the refusal of the State [fol. 1241] Commissions to permit present interstate rates to become effective on intrastate traffic." I am willing from the notations that have been made to have those parts of the legends on the title page of those exhibits stricken, beginning with the word "cause" so that that will leave the statement to read as far as Exhibit 100 is concerned, "Restatement of Exhibit 111-B, I. C. C., Docket 19610, showing revenue discrimination of carload commodities handled in switching service."

Mr. Hufsmith: I have no objection to that except as to one word and that is to leave out the word "discrimination." (Tr. 2701.) The word "discrimination" assumes what we are striking out the words "caused by the State Commission."

Mr. Shaffer: I think Mr. Davis I commenced my motion with the words "revenue discrimination caused by refusal of state Commissions," etc. (Tr. 2702.)

Mr. Campbell: Why not say alleged? (Tr. 2702.)

Examiner Faul: Mr. Davis, will you accept this latter suggestion calling it alleged discrimination?

Mr. Davis: Surely, if that will satisfy them.

Mr. Shaffer: That applies to exhibits 99 to 106, inclusive.

Examiner Faul: We will adjourn at this time until 10 o'clock tomorrow morning May 5, 1932. (Tr. 2703.)

W. H. WARD, called as a witness on behalf of respondents, was sworn and testified as follows:

Direct examination.

By Mr. Davis:

Am general freight agent of the Indiana Harbor Belt Railroad.

Mr. Walter: We will concede Mr. Ward's qualifications [fol. 1242] as a traffic man.

The Witness (continuing): The Indiana Harbor Belt is an industrial switching carrier engaged in serving industries on its line and it also handles overhead traffic. It is a switching carrier, the largest one I know of. (Tr. 2704.) There are approximately 493 industries located on it. (Tr. 2705.) A great number of them are served exclusively by the Indiana Harbor Belt. On our line, a district commonly known as the Calumet district is located on both sides of the Indiana-Illinois line. Most of our industries are in that district and they are located on both sides of the Indiana-Illinois state line, some in Illinois and some in Indiana. (Tr. 2705.) A great many of our assembly yards and interchange tracks are located very close to the state line and some of them overlap it. (Tr. 2705.) On our line the state rates both in Indiana and Illinois are 2½¢ per 100 pounds,

both for 1 and 2 line hauls. The interstate rates are 3¢ per 100 pounds for single line, 3½¢ for 2 lines, all subject to a minimum of 60,000 pounds. A one line haul interstate is a 5¢ per 100 pounds higher than for a single line intrastate haul and if a two line haul, the interstate rate is 1¢ per 100 pounds higher than for an intrastate movement and that situation is a most unhappy one so far as the Indiana Harbor Belt is concerned, (Tr. 2706) because many of our industries are so located that we make their shipments interstate practically when they leave the plant. Where they are competitive industries, other lines get in there and they can in most cases protect the state rate, and that puts us out of business; we cannot solicit it; and another thing, this situation has made us a load of unhappy customers on our line who are not contented. (Tr. 2707.) We have industries that are served exclusively by the Indiana Harbor Belt, one being W. J. Holliday & Co., which deals with iron and steel, rod, bar, sheet, etc., and there are [fol. 1243] a number of other industries located either on our road or within the district that deal with those same commodities. (Tr. 2707.) The Holliday shipments handled by the Indiana Harbor Belt, would always be moved interstate when destined either to Indiana or to Illinois because our connection with the plant is made in Illinois, although the plant itself is located in Hammond, Indiana and in order for the Indiana Harbor Belt railroad to move a car out of the plant or into the plant, it must necessarily cross the state line. Other companies that handle these same commodities that are located so their shipments could be handled state, are the Ryerson Plant, an Illinois Company, the Inland Steel, in Indiana, (Tr. 2708) and any number of them all over the district. We have quite a number of industries manufacturing animal feed and fertilizers on our line, one of which is the Riverdale Product Co., located in Calumet City, Illinois, from which plant it is not possible for us to move shipments into Illinois without crossing the state line, nor is it possible for our line to move their shipments into Indiana without crossing the state line and absolutely every shipment from that plant via our road would be interstate commerce, subject to the rates previously given as applicable on interstate shipments. (Tr. 2709.) There are several industries manufacturing animal feed and fertilizers on our line, 2 or 3 at Blue Island, Hales &

Hunter and 2 or 3 in Indiana (Tr. 2709-2710) and those located in Illinois can have their shipments moved to points in Illinois within the Illinois side of the district on state rates which would likewise be true on a movement from the Indiana plants to points within Indiana. The Riverdale Products Co., is not served by any other road. It is local to our line. The bulk of the traffic originating at industries in Indiana destined to points in Illinois would be an inter-[fol. 1244] state movement and the bulk of the business originating in Indiana goes to Illinois destinations on our line; the bulk of it moves from Indiana to Illinois. (Tr. 2710.) These industries that ship as I have just described from Indiana to Illinois, have competitors dealing in the same general commodities that are located on the Illinois side of the line in the district, and the industries located on the Illinois side of the Indiana-Illinois line within the district, shipping to Illinois points within the district would pay the 2½¢ rate as compared with the similar industries I have described and located in Indiana shipping into Illinois on a rate of 3¢ for 1 line haul, and 3½¢ for 2 line haul, most of it being 2 line hauls. The industries that ship within the Illinois side of the district for a 2 line haul pay 2½¢ per 100, the same as per single line. (Tr. 2711.) The American Maize Products Co., is located on our line at Roby, Indiana, and any shipment by that Company to the Illinois side of the district would pay the interstate rates. The Corn Products Refining Co., producing exactly the same products as the American Maize Co., is located at Argo, Illinois. I know as a traffic man that shipments are made from each of these plants into the district; that there are such shipments. (Tr. 2712.) Shipments from the American Maize Products Co., to the Illinois side of the district would cross the Indiana state line and would be interstate because originating in Indiana but shipments from Argo going to destinations within the district on the Illinois side of the line would move intrastate and if by a single line or a 2 line haul, would pay 2½¢, while the American Maize Co., for a single line interstate would pay 3¢ per 100 pounds. A 2 line haul from the American Maize Co., to destinations on the Illinois side would pay 3½¢. (Tr. 2713.) For a 3 or more line haul, that company would pay 4¢ to Illinois [fol. 1245] destinations but we do not have any hauls like that, or practically none. (Tr. 2714.) In Illinois, a 3 line movement would pay 3¢. We have a great number of in-

dustries on our road that deal in oil, located on both sides of the Indiana-Illinois state line. There is a large refinery at Whiting, Indiana, (Tr. 2714) which ships both locally within the district on the Indiana side of the line and interstate into the district to the Illinois side. (Tr. 2714.) At Norpaul, our station which might be called Franklin Park, Illinois, there is an industry that ships gasoline and commodities of that kind to points in the Illinois part of the district and the institution at Norpaul, located within the district, I think ships to points on the Indiana side also.

There is a small industry on our line in the oil business at Blue Island which ships mostly fuel oil, while the Norpaul plant ships refined gasoline. Blue Island is in Illinois, (Tr. 2715) and within the district and their shipments within the district on the Illinois side move intrastate. The refinery at Whiting ships fuel oil; it ships all kinds of oil. Prior to the Commission's decision in 19610, the same rate applied whether the shipments were state or interstate. There were certain exceptions that were not on the Lowrey basis but mostly for 1 line hauls. In fact, almost entirely for 1 line hauls, but since the decision in 19610, the rate situation is as I have previously described it. (Tr. 2716.) Under present conditions, it is not difficult for me to tell what the rates are but it might be difficult for the shipper. For instance our connections with the Monon and the Erie are both shown as being in Hammond. As a matter of fact, we cannot operate through that interlocker even if we took one car at a time without taking the car into Illinois and making it interstate business and the shipper would have no means of knowing that unless he asked me. He might [fol. 1246] think he was going to get the state rate but when it came time to settle, he would find he didn't get it.

Cross-examination.

By Mr. Walter:

The Indiana Harbor Belt has about 100 and some odd miles of main line, about 60 per cent of that being in Indiana. (Tr. 2717.) The Eastern terminus is Dune Park, Indiana, outside of the district. The first station on the East within the district, is Gibson, Indiana, our station name for it; but it is in Hammond. From Dune Park to Gibson is 18 miles; (Tr. 2718) practically all outside the Chicago

Switching District. That is the only part of our line outside the district. From Gibson, Indiana to the State line is about 5 miles. We have no main line in Indiana other than the line from Gibson to West Hammond. There are no branches; you have everything that we have in that, but we have a line to Indiana Harbor, the Eastern point of the district on our line for the Northern part of our line right on the lake. (Tr. 2719.) I cannot state the distance to Colehour via our line from Indiana Harbor or to the state line near Colehour from Indiana Harbor, but it is a comparatively short distance. I cannot give the approximate number of miles of our line within the switching district in Indiana. (Tr. 2720.) I have connected with this switching case from its inception and after the Commission's decision, we published the interstate rates. I don't know whether any carriers published rates not required to be published by that decision. (Tr. 2721.) I don't know what action the Elgin, Joliet and Eastern took towards publishing switching rates between points not required by the Commission's decision. They published a 2 line rate from Gary into the switching district and I don't know whether it was required or not by the Commission's decision, but they seemed to think it was. They published the regular [fol. 1247] switching rate. (Tr. 2722.) The Elgin, Joliet & Eastern published the same rates as applied within the district interstate, effective whatever date the interstate commerce commission said, December 10. I am a member of the switching committee, but the Elgin, Joliet & Eastern isn't but they have a good deal to say about switching rates on their own railroad and the through rates on their line with other railroads. (Tr. 2723.)

Mr. Walter: Prior to December 10, what had been the most Eastern point on the Elgin, Joliet & Eastern which carried the Chicago Switching district rate?

Mr. Davis: I object to that, that is not cross-examination. (Tr. 2723.)

Examiner Faul: I sustain the objection because he did not testify to the situation in regard to the Elgin, Joliet & Eastern, he testified in regard to the rates on his own line. (Tr. 2724.)

The Witness (continuing): I cannot, with any degree of accuracy give the number of miles in the Eastern part of the district that are jointly operated by the Elgin, Joliet

& Eastern, the Pennsylvania, the Chicago, Burlington & Quincy or any other line. It is operated some one way and some another. (Tr. 2725.) Where we jointly operate, there are instances where both perform switching service and some instances only one performs the switching service. We operate both ways. (Tr. 2725-2726.)

Between River Junction and Hegewisch, we operate our own train on that line under trackage; and not for anybody else; when you get to the industry, that is a different thing, that is spotting allowance. (Tr. 2726-2727.) The traffic originating on that line we get right at the industry. We get it from all of them on that line and so does the Pennsylvania. I said we got the traffic at the industry but spotting inside of the industry is performed by the Penn- [fol. 1248] sylvania but they do it for our account. It is as much our engine as the Pennsylvania lines, and that is a one line haul. (Tr. 2727.) Whenever we get the traffic at 108th or 112th St., yards, we apply the one line rate because as I told you, the Pennsylvania engine is as much ours as theirs. They may own it but it is working for us when it is getting the cars out of this industry. We have these spotting arrangements at almost all of the plants on our railroad; it is an economical way to handle it. There are some instances where carriers go in and get their own cars but in the majority of cases it is done by one engine, both for the convenience of the plant and the carrier. (Tr. 2728.) All traffic originating at industries on the Calumet River Railroad is competitive as between our line and the Pennsylvania. We can reach Illinois destinations as an intrastate movement from those industries. (Tr. 2729.)

Cross-examination.

By Mr. Hufsmith:

The biggest part of our business moves interstate. I would not care to approximate the percentage; I have not checked it up recently; we have made statements which I think are in this record; they are certainly in the original case showing how much of it was interstate and how much intrastate. I could not give my judgment in the matter. I would not care to approximate it either as 60 per cent or

80 per cent interstate. My judgment is that a major portion of it is interstate (Tr. 2730), but how much is and how much not, I do not know. I do not know whether 60 per cent of our traffic is interstate commerce. I have been in the traffic department of the Indiana Harbor Belt ever since its organization, 20 years. I know much of our traffic flows interstate and would say offhand that it is in excess of 60 per cent. (Tr. 2731.) I would prefer to give you the actual figures. If you will give me time, I will give them to you. I don't like to testify on guess work and will be [fol. 1249] glad to get the figures. (Tr. 2732.) All of our business is switching. We do not have line haul service at all. We serve a district outside the Chicago District, but it is served exactly the same way as in the district. It is a switching service outside of the Chicago Switching District. All facilities of our road are devoted to switching service within the Chicago District and adjacent territory. The present interstate rate within the Chicago District is 3¢ and if we make delivery after it is passed through the hands of 2 or 3 carriers, there is a 4¢ rate. (Tr. 2733.) A situation exists within the Chicago Switching District where business would be directly competitive between two industries and the one having an intrastate route available as against an interstate route, which has a differential of 1¢ under the interstate shipper where the movement was via 3 lines. (Tr. 2734.) In an intrastate movement the 1 and 2 line movements pay the same, 2½¢, while a 1 line interstate movement is 3¢. (Tr. 2734-2735.) There is no place in the tariff where the interstate rates exceed state rates by more than 1¢. (Tr. 2735-2736.)

Cross-examination.

By Mr. Brown:

The American Maize Products Company is located at Robey, Indiana, and the Hales-Hunter Company and Arcadia Mills are located at Blue Island, on our road. The Standard Elevator Company is located on our road at Hammond, Indiana. Prior to December 10th the rate on corn via our road from either the American Maize Products Company or Standard Elevator to the Hales-Hunter plant or the Arcadia Farms Milling Company plant was 2 cents per hundred pounds, minimum 60,000 pounds. (Tr.

2736.) The Pennsylvania Railroad would not take shipments from those two plants in Indiana and turn them over [fol. 1250] to us for delivery to either the Hales-Hunter plant or the Arcadia Farms Milling Company plant at Blue Island. (Tr. 2737.) It would not come that way from those two plants in Indiana. I know that. (Tr. 2738.)

Prior to December 10th, on grain from that connection with the Pennsylvania Railroad in the Chicago district to the Blue Island plants, when the grain traveled in the Chicago district, I don't know whether the rate of $4.95 per car would apply to that business or not. (Tr. 2738.) I said I did not know whether that rate would apply to such a movement as that, or not. We never had such a movement and never will have one. I think we had such a tariff. I cannot say what the charge of the Pennsylvania Railroad would be in that case. We do not have joint operations with the Pennsylvania Railroad to the Robey plant of the Standard Elevator. We have our own line at both places, so we could serve both plants, and do, with our own rails. (Tr. 2739.) We interchange with the Pennsylvania Railroad in the Chicago district.

Examination by Examiner Faul:

The exceptions to the Lowrey basis apply mostly for single-line hauls, and so far as our line is concerned those exceptions are all below the Lowrey basis; there are some exceptions on lines serving the northwest part of the district that are over. But I wouldn't say that the service we perform in connection with those movements is the same as those on which we receive the full Lowrey basis; the big exception we have is on refuse material. (Tr. 2740.) Most of our plants with very large operations give that refuse to us in big units of 10 to 15, 20 or 25 cars at a whack; that is the principal exception we have. Grain takes a [fol. 1251] lower basis; the grain rate on our line is very little different than the others, 2 cents against 2½. We get very little grain business to handle, but it is handled the same as the other commodities, in the same train and in the same way as our regular business is handled, both within Illinois and in Indiana. (Tr. 2741.)

Cross-examination.

By Mr. Cardy:

Our company serves a number of stone industries in the Chicago district, located at LaGrange, McCook and Bellwood, all in Illinois, and they are the only ones within the district. The movement of stone is somewhat different than the movement of commodities generally, such as I have described. (Tr. 2743.) We have no stone industries in Indiana. I have made no investigation as to whether or not freight rates have any connection with the movement of stone to interstate points in the district, but I know the stone business has all been shot to pieces, but whether it is from the rate or the general condition, I don't know. We do not get anywhere the stone we did. The interstate stone business within the district has fallen a great deal within the last year. I have not made any investigation or studied to determine whether or not an increase in the instrastate rates on stone within the district would have the effect of reducing our revenue, rather than increasing it, and I haven't any judgment on that; I haven't formed any opinion. Up to a few years ago stone moved in a very large volume over the Indiana Harbor Belt, but more and more of it is being trucked every day. Personally I made no effort to handle stone via our line that is now being used in the construction of the Chicago post office. We did not attempt to prescribe a rate that would actually move the stone, and made no effort to do so. I have no knowledge [fol. 1252] as to the rate that would have permitted the movement of stone from those quarries on our line to the post office. (Tr. 2745.) But I made no effort personally to obtain that movement for our railroad. I don't know whether any negotiations were made by anyone else, with our company or the company which served the post office site. We have no sand or gravel plants on our line in Illinois or Indiana. I don't think there is any difference in the movement of stone in the district and the movement of other traffic moving from industries in Illinois. (Tr. 2746.)

Recross-examination.

By Mr. Walters:

Stone is not really an exception; only in Illinois we have a lower rate on stone than we have on other commodities

applying to 100,000 pounds minimum. Refuse, of course, is a per-car proposition; per car regardless of minimum. We would handle one car on the rates. I cannot say the customary number per day, but we might get one car today and 20 tomorrow; and our rates are not predicated on the number of cars. (Tr. 2747.) We made this rate originally to aid our industries in getting rid of something that was required in order to operate; that was the reason for it originally. It is customary for this refuse to be handed to us in lots of more than one car. The Chicago Junction, while not exactly a part of the same system as the Indiana Harbor Belt is, is under the same general management. We have a number of hauls on our line of a mile, or such matter.

Mr. Walter: You are my witness now; I am on direct examination now. (Tr. 2748.)

Direct examination.

By Mr. Walter:

[fol. 1253] I don't know of any reason why a different rate should be applied for a one-line haul of 1 mile on our line than on the Chicago Junction for 1 mile. (Tr. 2749.) The Elgin, Joliet & Eastern rate prior to December 1st was 5 cents per hundred pounds, which was handled as a road-haul proposition and not a switching rate, and it applied from points in Indiana to the switching district on that line that runs out along the lake near Gary up through Buffington. The Elgin, Joliet & Eastern was not a party with our line to the joint 2½-cent interstate switching rate. It was not prior to the decision of the Commission a party to any interstate switching rate on the customary switching basis. Its rate was 5 cents. On December 10th, so far as interstate points were concerned, the two-line switching rate was published by the Elgin, Joliet & Eastern between the same points in Indiana and Illinois that I have pointed out before, their line going to Gary. (Tr. 2750.) It did not bring Gary within the switching district, but it brought Gary within the switching rate. They made the same switching rates, 3 cents one-line, 3½ cents two-line. Prior to that time the Elgin, Joliet & Eastern rate had been 5 cents. It could not have been more than 5 cents, but I think on some commodities it was less; but I don't know because I would not be interested in what their local rate

was. It is a fair statement to say that prior to the effective date of these tariffs the Elgin, Joliet & Eastern had never been engaged in the switching business as a member of the Chicago Switching Committee in the Chicago switching district. (Tr. 2751.) It has not become a member of the switching committee since that time. When the Elgin, Joliet & Eastern published the switching rates it is my understanding that it expected to divide them in the same [fol. 1254] manner that the rates in the district were divided, that is, on two-line hauls, 50-50; I don't know whether we are actually accepting revenue on that basis or not; I have not checked it up. I don't know that there is any dispute about it. It would be fair if they make the switching rate, that they divide it the same as the other carriers, and we would not take less than half of the 3½ cents. We would like to get more if we could. (Tr. 2753.) The 5-cent rate was divided on a different basis, on a road-haul basis. In other words, the same as we would divide a rate from New York. It was not a mileage pro rate. We got 2 cents out of the 5-cent rate in the district; and dividing the 3½ cent rate we would get 1¾. (Tr. 2754.)

Item 75, tariff 16, of the Great Lakes Pipe Line Company of May 4, 1932, provides for absorption of railroad switching charges as published and on file with the Interstate Commerce Commission on interstate traffic and with the State Commissions on state traffic, applying from regularly established loading racks used by the Great Lakes Pipe Line Company at its pipe line terminals in the City of Chicago to delivery locations within the switching limits of the City of Chicago, as defined by tariffs lawfully on file. (Tr. 2754.) But I didn't know it up to the time you showed it to me, but it is in the tariff you showed me. (Tr. 2757.) I don't know of any higher rate than 5 cents applying jointly via the Elgin, Joliet & Eastern and the Indiana Harbor Belt between Gary and points in Indiana and the district, which have since been put on a switching basis. Yes, cement, 6½, was higher. I do not know of any rate that was higher that they reduced down to 5 cents. Our division of the 6½-cent cement rate was divided the same as the 5-cent rate. The 5 and the 6½-cent rates applied on what used to be the Chicago, Lake Shore & Eastern Rail-[fol. 1255] road, now a part of the Elgin, Joliet & Eastern, which runs along the lake shore from South Chicago to

Gary, and the traffic today between Gary and points intermediate moves on a Chicago switching district rate. (Tr. 2758.) But prior to that time it was on a different basis.

Mr. Walter: That is all. (Tr. 2759.)

Mr. Brown: Mr. Examiner, may I at this time put in the tariffs to which I referred a while ago?

Examiner Faul: Go ahead.

Mr. Brown: I want to put these tariff references into the record, showing rates that were in effect prior to December 10, 1931.

First, Indiana Harbor Belt Railroad tariff I. C. C. No. 74, effective August 5, 1930, showing on page 4 that on grain and grain screenings from connecting lines only, destined to industries on the Indiana Harbor Belt, a rate of $4.95 per car was assessed regardless of weight.

Indiana Harbor Belt tariff I. C. C. 805, effective October 1, 1931, shows that Arcady Farms Milling Company and Hales-Hunter Company, Blue Island, Illinois; American Maize Products Company at Robey, Indiana, and Standard Elevator Company at Hammond, Indiana, are industries on the Indiana Harbor Belt Railroad. (Tr. 2760.)

Pennsylvania Railroad Company tariff I. C. C. 538, effective May 30, 1931, item 170, shows rate of $4.95 per car on grain industries on that road to junctions with connecting lines on traffic moving wholly within the Chicago district, and that tariff shows that American Maize Products Company of Robey, Indiana, and Standard Elevator Company, Hammond, Indiana, are industries on that railroad. The tariffs since December 10, 1931, as far as shipments [fol. 1256] interstate are concerned go to the 3, 3½ and 4-cent basis, that is, on interstate hauls; and on state hauls they remain as they were before, $4.95 per car. (Tr. 2761.)

W. H. Ward recalled.

Cross-examination.

By Mr. Hufsmith:

Since your request regarding figures as to amount of traffic handled by our line moving interstate and intrastate, we have had this computation which I think is fairly repre-

sentative. It shows two-line business for the month of July, 1931, interstate 3150 cars or 54 per cent; Illinois state 2232 cars and Indiana state 492, making 46 per cent state business as against 54 per cent interstate. One-line business I do not have, but it runs about the same way, as far as I can figure.

A little better than half of our traffic is interstate. I have not included in this any cars we handled in line haul, or where delivery has been made out of a line-haul movement; this is all crosstown business and purely intradistrict traffic. We handle a large volume of line-haul business by delivering it to the consignee or from the consignor to the line-haul carrier. (Tr. 2763.) The switching services we perform in handling cars from our line to the consignees or from the consignors, as the case may be, are fairly comparable moves to those we make in intradistrict switching. On business we receive from line-haul carriers we receive a division of the through rate, which is shown in the division sheets issued by C. W. Galligan, agent, and in most cases is 2 cents per hundred pounds. In the participation in that [fol. 1257] line-haul movement where we do the switching within the Chicago district, our proportion under the tariff, in the majority of cases, is 2 cents per hundred pounds. (Tr. 2764.) There are exceptions to it. Take stone, for instance, and on coal, we get 30 cents per ton, which is the Chicago rate published by the trunk lines, and divisions are provided in division sheets of Mr. Galligan's edition, which provide for the application of the Chicago rate to and from our industries. The division sheets are not published or filed with the Interstate Commerce Commission. The tariffs are. These divisions with the line-haul carriers are matters of agreement. (Tr. 2765.) That divisional arrangement with the line-haul carriers has not always been the same. The 2 cents has applied for a number of years. (Tr. 2765.) When the Lowrey tariff went into effect it was less than 2 cents, but it has been increased and decreased as the various rate orders increased or decreased the through rate. Under these agreements we are getting for our switching service out of the line-haul carriers, revenue for switching cars in the district, 2 cents per hundred pounds, with the exceptions. That 2-cent division has been in effect approximately five years. (Tr. 2766.) In a two-line switching service where we are either the terminal carrier

or the original carrier, our switching service would be the same as it was on this line haul (Tr. 2767); but when you take a one-line haul it is quite different, because there is a terminal service at both ends, there being more service on the one-line switching movement than on other movements, because we have the terminal or spotting service at both ends; on the line-haul we have it only at one end. There might on the line-haul business be movements through three or four yards, and with an industry a movement through only two yards, and it might be reversed the [fol. 1258] next day. (Tr. 2768.)

Examination by Mr. Walter (Tr. 2770):

Prior to the time we entered into the joint switching rates with the Elgin, Joliet & Eastern that business was treated as line haul and now it is treated as intradistrict switching; so that on our figures today which we count as intradistrict we include all the business interchanged with the Elgin, Joliet & Eastern, while in the previous record none of those cars would be there; but they do not amount to much in any way, and we have no figures in here to show that. I think most line-haul rates were increased 10 per cent as the result of Ex Parte 103, but these particular switching rates in which the Elgin, Joliet & Eastern is concerned I think took no increase at all. (Tr. 2771.) I did not furnish the figures to Mr. Vivian for our railroad. (Tr. 2772.)

H. N. JOUVER sworn and testified as follows:

Direct examination.

By Mr. Davis:

Am general freight agent of the Baltimore & Ohio Chicago Terminal.

Mr. Walter: We will concede his qualifications. (Tr. 2774.)

The Witness: It is purely a switching line, operating within the Chicago switching district, including Chicago Heights. We cross the Indiana and Illinois state line in the service we render within the district, at a point between East Chicago and West Hammond, Illinois. We have 377

industries located on our railroad that we serve. Some are located on our rails in Indiana and some in Illinois. (Tr. [fol. 1259] 2775.) We have industries located on our rails dealing in petroleum and its products: The Calumet Refining Company at Burnham, Illinois; Globe Oil Company at Whiting, Indiana; Sinclair Refining Company at East Chicago, Indiana; Empire Refining Company at East Chicago, Indiana; and the Peerless Oil Company at Blue Island, Illinois. These industries in Illinois have service to other industries in Illinois via a state route, and those located in Indiana have state service within the Indiana portion of the district to some points via our railroad. The companies located in Indiana ship into the Illinois side of the district and on such shipments would move on an interstate rate of 3 cents per hundred pounds, minimum 60,000 pounds, single-line haul. (Tr. 2776.) On a two-line interstate movement the rate is 3½ cents per hundred pounds, minimum 60,000 pounds, and three lines or more is 4 cents. That is not true of a single-line shipment within the state of Illinois. Our rate would be 2½ cents per hundred pounds, minimum 60,000 pounds, for one- and for two-line hauls, and 3 cents for three lines; and the same would apply for a purely intrastate movement in Indiana. We have an industry on the line dealing in iron and steel articles, which buys it raw product usually from a larger mill. There are quite a few other industries in the district that deal in iron and steel articles. (Tr. 2777.) These mills or factories are located on both the Indiana side of the district as well as the Illinois side of the district. We have a dock on our railroad at East Chicago, Indiana, and there is also a dock at South Chicago on the Belt Railway in Illinois. I know in a general way that the same or similar commodities can come into each of those docks and be shipped into the district. (Tr. 2778.) That is, from the Illinois dock into Indiana and from the Indiana dock into Illinois, each of these movements being interstate. (Tr. 2779.)

[fol. 1260] The United States Reduction Company is located on the Baltimore & Ohio Chicago Terminal at East Chicago, Indiana, and it occasionally ships into the Chicago switching district. (Tr. 2779.) Their shipments are confined to interstate movements.

Goldsmith Brothers are not on the Baltimore & Ohio Chicago Terminal. They are on the Pennsylvania Railroad

at 59th and Throop Streets. The United States Reduction Company and Goldsmith Brothers deal in pig aluminum. The Graver Corporation is located at East Chicago, Indiana, and ships tanks to the district, both state and interstate. (Tr. 2780.) The Lasker Boiler & Engineering Corporation are located on the Chicago & Alton at 33d and Lincoln Streets, Chicago, Illinois. Its product is about the same as the Graver Company, steel tanks, and it ships both state and interstate within the district. (Tr. 2781.)

The Youngstown Sheet and Tube Company is located on the Indiana Harbor Belt at Indiana Harbor, Indiana and makes interstate shipments within the district but I do not know that it ships intrastate. It ships from Indiana into Illinois. The Republic Steel Corporation is located at South Chicago on the Pennsylvania Railroad on the Illinois side of the line. It has made shipments to points on our road in Illinois. The two industries last named manufacture various iron and steel articles. Confining the matter to their shipments, to the particular industry I have in mind they ship steel bars; (Tr. 2783) and as to the other industries I have mentioned, I have referred to what they ship and not what they manufacture. (Tr. 2783.)

Cross-examination.

By Mr. Walter:

Our company has 109.20 miles of main track railroad in Illinois and 10.2 miles in Indiana, or a total of 119.22 [fol. 1261] miles. Prior to December 1, 1931, our road was a party to joint rates with the Elgin, Joliet & Eastern Railway to points within and from the Chicago Switching District on a road haul basis. (Tr. 2784.) Since December 10, there has been a reduction in the rates and divisions. (Tr. 2784.)

Mr. Walter: Was there opposition on the part of yourselves and other lines in the district participating with the Elgin, Joliet & Eastern Railway on a switching basis?

Mr. Davis: I object to that. That is not cross examination and it is getting into the family secrets of the railway. (Tr. 2785.)

Mr. Walter: I propose to prove by this witness, if the Examiner please, that when this decision came out, the Baltimore & Ohio Chicago Terminal, the Indiana Harbor Belt

and practically every line in the Chicago Switching District objected to joining the Elgin, Joliet & Eastern in these switching basis rates because they are reductions in revenue not required by the decision of the Commission and that the Elgin, Joliet & Eastern and its allied interests forced these lines to yield one by one. (Tr. 2785.)

Examiner Faul: The objection is sustained. The record shows that the switching rates are in effect. I think that is the answer. (Tr. 2786.)

Mr. Walter: I take an exception. (Tr. 2787.)

The Witness (continuing): The joint through rates to and from the switching district in which we participated with the Elgin, Joliet & Eastern Railway, prior to December 10, were line haul rates and divided on the line haul basis, but now our line is a party to joint through rates with the Elgin, Joliet & Eastern on a switching basis either as a part of a 2 line haul or a part of a 3 line haul at the [fol. 1262] rates prescribed by the Commission for interstate movements. The division is on the basis that customarily is applied. (Tr. 2787-2788.) Our line connects with the Pennsylvania Railroad at 59th St., but not at 49th St. It crosses our line at 49th St., but there is no facilities there for interchange of traffic that I know of. We cross the Pennsylvania at 49th St., but it is not a direct connection. Our tariff shows where the Pennsylvania comes on our railroad to deliver to us at 49th St., but the hold track is located between 49th and 59th Street (Tr. 2788), which extends approximately 10 blocks. It is a long lead track. We receive from and deliver to them freight on that track and the tariff states that the connection is at 49th St. Our longest interstate haul in the district is approximately 35 miles and our shortest hauls intrastate are 5 feet, 10 feet and 50 feet. (Tr. 2789.) We may have interstate hauls of 50 feet. You cannot determine by the mere statement of the rate on intrastate or interstate movements, the measure of service that is performed under the respective rates. The only way you can do that is to average it by taking all of the cars. (Tr. 2790.) In making road haul rates, the commodity has something to do with it, but in making switching rates, in the Chicago District, we do not take cognizance of the commodities. (Tr. 2790-2791.) Since 1911, the Chicago district rates have been handled regardless of commodity or distance with cer-

tain exceptions existing prior to December 10, both on interstate and intrastate applicable to cinders and refuse material. The minimum revenue per car on cinders was $15.00 and $10.00 per car on refuse material for a single line movement. Refuse material, Mr. Examiner, as we have it described, covers excavating material and refuse material from factories, and cinders take different fates from the refuse material. $15.00 per car applies on cinders [fol. 1263] locally on our railroad and the refuse $10.00 per car.

Cross-examination.

By Mr. Cardy:

There are stone plants on our line at McCook and Thornton, Illinois. We have none in Indiana. Since the order of the Commission in this case became effective, intrastate rates have in fact been increased 10 per cent. (Tr. 2792-2793.) And at that time there was no increase in the interstate rates. I have made no investigation to determine whether or not the effect of the increased rates on crushed stone will actually result in an increase in revenue. There has been a material change in the last year in the movement of stone in the district on our line. I do not know that the present rates on stone in the district intrastate has had any effect whatever on the movement of intrastate traffic in the district. (Tr. 2793.) The 10% increase in intrastate rates I referred to, covered the exparte 103 increases which will expire next year under the tariff as now filed. Those increases have been applied on our railroad on all intrastate traffic and covering all commodities whether they move under the Lowrey basis or on exceptions to the Lowrey basis. It was a straight 10 per cent increase. (Tr. 2794.) This increase was not applied on interstate traffic. I have made no investigation since the 10 per cent increase went into effect on stone to see whether or not it has had any affect on the movement of traffic in the district.

Cross-examination.

By Mr. Hufsmith:

Our service is entirely a switching service. About 40 per cent of our business is straight switching service,

which originates and terminates in the Chicago District (Tr. 2795), and about 60 per cent of the cars handled are delivered to or received from line haul carriers on which we render a purely switching service. I think our company [fol. 1264] handles traffic to or from line haul carriers with the same engines and crews that switch cars originating and terminating within the district. (Tr. 2796-2797.)

Examiner Faul: What is the difference in the service as between a shipment moving from a point outside of the district going through the district to a point beyond the district as compared with the movement of a shipment that is entirely within the district as far as the Baltimore & Ohio Chicago Terminal is concerned.

The Witness: I would suggest, Mr. Examiner, that you ask that question of an operating man. He would be more familiar with the operations than I am. He might have some difference in the operations; I do not know that he has, but he might have and I would rather you would let him answer it. (Tr. 2801.)

I said that about 60 per cent of our business we receive from or deliver to line haul carriers (Tr. 2819), and for our service in handling that character of traffic, we receive 2¢. (Tr. 2821.) This 60 per cent of traffic going beyond the district would not be affected by the rates that would be prescribed in this case. (Tr. 2821.)

Mr. Davis: Now, if the Examiner please, I thought I had another witness, but he is not here so I will now rest my case in Docket 19610.

Mr. Walter: Three witnesses were to be furnished here without subpoena at our request, if your honor please, and two of them are here so perhaps I should put them on. (Tr. 2821.)

William McMaster was duly sworn and testified as follows:

Direct examination.

By Mr. Walter:

Am purchasing agent of the Indiana Harbor Belt and have been connected with it between 25 and 30 years. I [fol. 1265] purchase various materials used by our company which includes coal and lumber.

I have nothing to do with making contracts for services to be performed by contractors for our road, and deal only with supplies. I buy lumber from various lumber dealers (Tr. 2822) including the Edward Hines Lumber Company (Tr. 2822). I heard about the filing of a petition with the interstate commerce commission by various concerns in the Chicago district in this case, asking the setting aside of the order of July 31, 1931, and to reopen the proceedings and to assign it for further hearing. I took no action in the formation of a committee to deal with that matter and was not a member of the committee appointed to consult with the coal interests. Mr. A. A. Adams, traffic manager of the Edward Hines Lumber Company, was in my office. I buy lumber from that company. I asked him to withdraw from the case and take the name of the Edward Hines Lumber Co., off that petition. (Tr. 2823.) I did not talk to any other members.

Mr. Davis: I move to strike out all of the testimony of this witness. (Tr. 2825.)

Examiner Faul: The Examiners are unable to see where this testimony in any way will be pertinent to the issue before us in this proceeding. Furthermore, Mr. Walter has stated that it is not directly pertinent to the decision of this case and because of the fact that the matter has already been brought to the attention of the Commission, the examiners will sustain the motion.

Mr. Walter: And to that I except.

Mr. Hufsmith: I join in the exception.

Mr. Walter: Mr. McMaster, were you a member of a committee of three representing the Chicago, Burlington & [fol. 1266] Quincy, Indiana Harbor Belt, and Illinois Central Railroads that called on Mr. George Reed, Vice President of the Peabody Coal Company and asked him to see that the name of the Illinois Coal Traffic Bureau was withdrawn as a petitioner?

A. No, sir. (Tr. 2831.)

Mr. Davis: Just a moment; the same objection.

Examiner Faul: The examiners will sustain the objection. (Tr. 2831-2832.)

Mr. Walter: I ask that the record be preserved so that I may appeal to the Commission.

Mr. Hufsmith: The Indiana Commission joins in the request also.

Mr. Shafer: And likewise, the Illinois Commission joins.
Examiner Faul: It will be so understood. (Tr. 2833.)

R. A. FELDES, duly sworn, testified as follows:

Direct examination.

By Mr. Walter:

Am Assistant to the Vice President of the Indiana Harbor Belt Railroad and general industrial agent. As Assistant to the Vice President, I perform general executive duties and work as industrial agent, my duties are in connection with the location of industries. (Tr. 2834.) I was not a witness in the hearing in 1928 but have been with the company during all of that time. (Tr. 2834.) I do not know that at that time our company had pending a contract for the erection of a water tank at a point on our line on which Roberts and Shaffer Co., were bidders or interested in the contract and I did not talk with them about it.

Mr. Walter: Did you ask them to withdraw their name from the petition signed by various parties to which they [fol. 1267] were signatories, dated September 21, 1931? (Tr. 2835.)

Mr. Davis: Objection.

Examiner Faul: The objection is sustained. (Tr. 2835.)

Mr. Walter: Did you talk to the Secretary of the East Chicago Chamber of Commerce and request that organization to withdraw its petitioner?

Mr. Davis: I object.

Examiner Faul: Sustained. (Tr. 2836.)

Mr. Walter: At that time, was there pending a proposed improvement in the nature of a viaduct at East Chicago, the expense of which was to be prorated between the city and the railroad?

Mr. Davis: I object to that as having no bearing on this case whatever if there was a viaduct pending or if there were a dozen viaducts pending.

Examiner Faul: Sustained.

Mr. Walter: Was Mr. H. A. Parker at that time Secretary of the East Chicago Chamber of Commerce.

The Witness: I do not think I understand just what time you are talking about. You started out with the question as to whether we were building a water tank on our line at some time or other, but you did not specify what time.

Mr. Walter: Mr. Feldes, did you, prior to December 1, 1931, and I think in November, probably in November, telephone (Tr. 2836), Mr. H. A. Parker, Secretary of the East Chicago Chamber of Commerce and request that organization to withdraw as petitioner from the petition referred to, calling attention to the fact that the city was interested in the expense of building the viaduct and making certain improvements and stating that the work would not go forward if the East Chicago Chamber of Commerce did not withdraw?

Mr. Davis: I object. (Tr. 2837.)

[fol. 1268] Examiner Faul: That relates to the same matter that you took up with the Commission some months ago? (Tr. 2837.)

Mr. Walter: I called it to the attention of the Commission prior to December 1, and on the suggestion of a representative of the Commission, referred it to Mr. Bonneville, head of the Bureau of Inquiry. I heard nothing further from it and desire to make this a matter of record that everybody might know why those had joined my present clients had ceased to stay with them and have withdrawn. I offer to prove by this witness that he is responsible for those two concerns.

Examiner Faul: In order to not unduly enlarge the record, I will sustain the objection. It appears that the matter is now before the Commission and will have to be handled in that way.

Mr. Walter: I want an exception and ask that the record be preserved in such form so that it can be presented to the Commission and ask the matter to be presented for consideration on both motions at the oral argument. That is all I have to ask Mr. Feldes.

Examiner Faul: You are excused. (Tr. 2838.)

Mr. Walter: As to the Peabody Coal Company, I offer to prove by a witness that a committee of three, representing the Chicago, Burlington & Quincy, the Indiana Harbor Belt, and the Illinois Central railroads, called on Mr. George Reed, vice president of the Peabody Coal Company,

and requested him to withdraw the name of the Illinois Coal Traffic Bureau as a petitioner, and that the name was withdrawn as a petitioner.

Mr. Davis: To that offer of proof I want to object, on the same grounds that have been heretofore urged. (Tr. 2840.)

Mr. Walter: Well, since Mr. Evans is here, vice president of the Indiana Harbor Belt, the questions that I would put to him would be the same as those put to the preceding [fol. 1269] witnesses, and so long as you are going to sustain the objection I will save an exception and let the record stand on it without going through the motions of putting him on the stand. (Tr. 2840.)

Examiner Faul: The ruling of the examiners will be the same.

Mr. Walter: Exception. Now we are ready to proceed, and if the respondents have finished their case, as I understand they have. Is that right?

Mr. Davis: Yes, I have rested.

Mr. Walter: Now, if the Examiners please, at the conclusion of the case made by the respondents, we desire to move for the dismissal and discontinuance of the investigation on the ground that the respondents have shown no basis for an order under Section 13. We will, however, assuming that the motion will be overruled, proceed to call some witnesses.

Examiner Faul: The record will show your motion, Mr. Walter, and the motion is overruled.

George H. Shafer, duly sworn, testified as follows:

Direct examination.

By Mr. Walter (Tr. 2841):

Am transportation rate expert of the Illinois Commerce Commission, and have been with that Commission since May, 1930. Prior thereto was with the International Harvester Company for something over 12 years, engaged in general traffic work, and immediately prior to that was with the Chicago & Alton Railroad in various operating and transportation work. (Tr. 2842.) Am familiar with the issues in this case.

Mr. Walter: Will you tell just how the case came before the Illinois Commerce Commission involving the so-called Lowrey rates?

[fol. 1270] Mr. Davis: Objected to as hearsay. (Tr. 2842).

Examiner Faul: The witness may answer, if he knows.

The Witness (continuing): This case came before the Illinois Commerce Commission through schedules filed to be effective April 30, 1927, proposing increases in the so-called Lowrey basis of rates from 2½ cents on one-line and two-line hauls to 3 and 3½ cents per hundred pounds, and from 3 cents per hundred on three-line hauls to 4 cents per hundred pounds. These schedules were suspended by the Illinois Commerce Commission from time to time until hearings were held jointly in connection with the Interstate Commerce Commission. The schedules filed grew out of the decision of the Interstate Commerce Commission in the Jones & Laughlin Steel case, which involved line-haul rates on iron and steel articles, reported in 96 I. C. C. 682, decided April 15, 1925. What I intend to give is what is set forth in the report of the Interstate Commerce Commission in this case regarding the origin of it, that it originally arose out of the Jones & Laughlin proceeding, which is likewise in the order of the Illinois Commission. (Tr. 2844.) At the time the hearing of the Illinois cases the only issue before the Illinois Commission was the question of the reasonableness of the proposed Lowrey rates as stated in the tariffs which were suspended by the Illinois Commission. No general investigation of rates was instituted by the Illinois Commission. (Tr. 2844.) During the pendency of those proceedings no petition was filed invoking the judgment of the Commission on any other of the switching rates in the Chicago district. (Tr. 2844.) The Commission found from the record, based on the volume of traffic moving in September, 1926, that 40.3 per cent of the total traffic moved interstate, the balance moving intra-[fol. 1271] state within Illinois and Indiana, 53 per cent being within the state of Illinois. (Tr. 2845.) The Commission found the average length of haul in miles for one line within Illinois was 14.7; on interstate traffic 15 miles; for two-line hauls intrastate the average was 15.9 miles; interstate 27.5 miles; for three-line hauls intrastate Illinois,

23.4 miles; and interstate 34.2. Those distances and percentages are identical with the distances and percentages shown in the report of the Interstate Commerce Commission. The decision of the Illinois Commerce Commission was rendered on the 26th day of August, 1931. The Illinois Commerce law under which the Illinois Commerce Commission gets its jurisdiction provides that parties have the right to file a petition for rehearing or reopening of cases within thirty days from the order of the Commission. (Tr. 2846), but no such petition was filed by any of the respondents. There is a provision in the statute for judicial review of the actions of the Illinois Commerce Commission, but no proceeding in any court, state or federal, was brought by the respondents or anyone else to review the action of the Illinois Commerce Commission in its findings in this case. (Tr. 2847.) The Commission found from the evidence before it, and being restricted to the schedules filed before the Commission, that the evidence did not justify any change in the then existing Lowrey rates. But the Commission permitted the carriers to increase the Chicago switching rates within the State of Illinois to the extent of Ex Parte 103 increases, namely, 10 per cent, which became effective Januray 11, 1932. (Tr. 2847.) This increase made the 2½-cent one- and two-line haul rates 2.75 cents, and the three-line haul rates roughly 3.3 cents. No [fol. 1272] other application has been made for an increase in the so-called exceptions to the Lowrey basis. The 10 per cent increase became effective January 11, 1932. (Tr. 2848.) Our Commission is a respondent in this proceeding before the Interstate Commerce Commission, and I am authorized to appear here on behalf of that Commission and state its views. (Tr. 2849.) The Illinois Commission, after following the procedure outlined in the statute, and after very careful and thorough study of the evidence introduced in the case, found that the carriers had not submitted evidence sufficient to justify the increases, and we take the position now that we should come here and defend the order of the Illinois Commerce Commission, and if that order is to be overthrown, it must be overthrown by competent evidence and on proper facts found by this Commission. (Tr. 2850.) We further feel that carriers should have exhausted their efforts within the state of Illinois, through petition to the Illinois Commerce Commission in

an effort to show changed condition after the close of the hearing, between then and the time of the order of the Commission, or to appeal to the state courts, as is usually the practice, rather than immediately after the order of the Commission was entered, file the 13th Section case. We feel that the decision and order of the Illinois Commerce Commission should be supported and found reasonable. (Tr. 2851.)

Mr. Walter: Mr. Shafer, what was the position of the Illinois Commerce Commission as to the so-called cost study made in 1927, applied against traffic moving in 1926, as to whether or not it should be relied on or whether the present record should be with all conditions as of today? (Tr. 2851.)

Mr. Davis: I object to that; it is only an opinion that he is asking for and not facts upon which any conclusion can [fol. 1273] be reached, and has no bearing on the issues in this case. (Tr. 2851.)

Examiner Faul: The Interstate Commerce Commission has overruled three motions for a new cost study, but if in the face of that Mr. Walter wants an answer to his question, the witness may answer.

The Witness. Naturally we feel the evidence as to cost taken in connection with 1927 traffic, the hearing having closed in 1928, should not be used as a basis for increasing rates in the state of Illinois, and our position is that the record today should reflect present-day conditions, and that an order for the future should be based upon those conditions, upon the facts as they are today. (Tr. 2852.)

Examination by Examiner Faul:

We have made no particular contention that conditions as they exist today are more normal or reflect a more normal situation than the conditions which existed at the time of the prior record. (Tr. 2852.) We are merely saying that the Interstate Commerce Commission should have the facts as they are today, whatever they are, and we want an order based upon conditions as they are today, whether normal or subnormal. If the Interstate Commerce Commission is to assume jurisdiction over intrastate rates that should be based upon evidence of facts as they exist now. As to whether the Interstate Commerce Commission would

be in a better position to decide this case upon a new cost study under present conditions, I do not know, because I do not know what a new record would disclose; but if the decision of the Commission was rendered within a reasonable time, I think it would. (Tr. 2854.) The Illinois Commerce Commission insists that before the laws of the state [fol. 1274] of Illinois are set aside entirely, we shall have opportunity to have the facts presented as they are at the time the action of the Interstate Commerce Commission is taken. (Tr. 2855.)

Cross-examination.

By Mr. Davis:

The record in this case closed before the Illinois Commerce Commission September 21, 1928, and the Commission rendered its decision therein immediately after the order of the Interstate Commerce Commission was entered, I believe on August 26, 1931. The case was pending before our Commission from September, 1928, to about August, 1931. The fact that most cases that are heard on the same record as between the State Commission and the Interstate Commerce Commission are decided at the same time, or substantially the same time, is the reason that the order of the Illinois Commerce Commission was not entered until the 26th day of August, 1931, which was approximately the same date that the Interstate Commerce Commission order was released. (Tr. 2856.) The Illinois Commerce Commission order was released August 26, 1931, and the Interstate Commerce Commission order a few days in advance of that.

The figures I have introduced or quoted were taken from the report of the Illinois Commerce Commission that was a part of the record in the Illinois case. The report of the Illinois Commission and the report of the Indiana Commission were not compiled on the same date. There was collaboration between the Illinois Commerce Commission and the Public Service Commission of Indiana at the time our report and its report were made. At the time of the 10 per cent advance under Ex Parte 103 we were in conference with the carriers as to whether the tariffs should [fol. 1275] be suspended carrying this 10 per cent advance. It is not a fact that the tariffs would have been suspended by the Illinois Commerce Commission if the carriers had

not agreed to apply that on the switching rates within Illinois. The carriers were told that there was a strong possibility that they would be. (Tr. 2859.) The rates as to which the carriers were advised would probably be suspended applied on certain low-grade commodities which had competition within the district, and the carriers objected to putting the increase on for fear it would prejudice this case, and we advised that we would not assume any responsibility as to whether it would prejudice the case or not, and as I stated, the 10 per cent increase was applied. (Tr. 2860.) I could not say that starting with Ex Parte 74 in 1920, there has not been a single instance since where the Interstate Commerce Commission differed from the Illinois Commission, that the carriers have not been obliged to get an order from the Interstate Commerce Commission either under Section 3 or Section 13 before they could increase the state rates; but I know that they were obliged to do that in Ex Parte 74; and I know of the recent coal rates within the State of Illinois; that matter was appealed to the Supreme Court of Illinois, which upheld the Commission, and then you filed your 13th Section case. (Tr. 2861.) The Interstate Commerce Commission partially overthrew the action of the Illinois Commission (Tr. 2861), and the Illinois Commission made an exception in the case of Ex Parte 103, the emergency charges, though I think there were others which I cannot recall. (Tr. 2862.) The class rates recently proposed are now under suspension on state traffic in the state of Illinois, though in effect on interstate [fol. 1276] traffic, though there is another question involved there besides the reasonableness. (Tr. 2862.) It is the question of abolishing the Illinois classification. As to Docket 17000, part 6, iron and steel rates prescribed by the Illinois Commerce Commission, the Illinois Commission found on that record, as in the case of the Chicago switching record, that the carriers had not justified the increases, and incidentally I understand they are going to accept the state basis on state traffic. The Illinois Commerce Commission did not accept the basis of the Interstate Commerce Commission's decision in that case.

Examination by Examiner Faul:

In referring to exceptions to the Lowrey basis that were not suspended, no exceptions were suspended because the

carriers did not propose or file schedules proposing to change any of the exceptions on Illinois intrastate traffic; and the only reason they were before your Commission was because you instituted a general investigation, which was broad enough to include the exceptions. (Tr. 2863.) The commodities excepted were various, such as slag, pig iron, grain, grain products, gravel, sand, stone in some instances, and many other commodities. In this instance, so far as the exceptions are concerned, the carriers are here trying to get the Interstate Commerce Commission to order in or require increases in rates which were never formally before the Illinois Commerce Commission or passed upon by it in the case which was heard on the same record as your case. The record shows that before the Interstate Commerce Commission all commodities were included, whereas the commodities before the Illinois Commission were limited in number. (Tr. 2864.)

Examination by Mr. H. J. Campbell:

[fol. 1277] The switching rates on grain were excepted from the Lowrey basis and the intrastate rates on grain were never before the Illinois Commerce Commission in this case now under attack, and no tariffs have ever been filed with the Illinois Commerce Commission seeking to increase the intrastate Illinois switching rates on grain within the Chicago district. (Tr. 2865.) It would be correct to say that all Lowrey rates were under suspension in Illinois. (Tr. 2865.)

K. E. THOLIN, duly sworn, testified as follows:

Direct examination.

By Mr. Walter:

Am supervising examiner of accounts for the Illinois Commerce Commission and have been with it 13 years. (Tr. 2866-2867.) Was a witness in this case in its earlier hearings, and participated in the so-called cost study conducted in the case. I was in close touch with the study as it was being conducted. I, and a force of men working under me, examined a great volume of the carriers' records

and their working papers, and we prepared one exhibit and also participated in the joint conferences on disputed questions; and since the record has been closed in the case I have been making a very exhaustive study of the record pertaining to the cost study in particular, and I think it is not representative as pertaining to all the traffic in the district. (Tr. 2867.)

Referring to page 6 of Exhibit 9 in this case, it shows that in the month of September, 1926, there were 1764 cars other than iron and steel which moved in one-line haul on the Chicago Junction Railway, which line was not included in the cost study. There were 14 cars of iron and steel in [fol. 1278] the same month on that railroad. Contrasting that movement with the minor shipments of some other carriers included in the cost study, I find that the Chicago, Burlington & Quincy was included, though only 30 cars moved in one-line haul, and the Chicago & North Western Railway was included although only 40 cars moved in one-line haul. The figures regarding the Chicago Junction Railway are taken from Exhibit 9, and the figures for the Burlington and the North Western were taken from Mr. Oliver's Exhibit 13. (Tr. 2869.) Several other of the carriers had less than 100 cars in the month of September in one-line hauls. The Chicago Junction Railway has been cited by the Interstate Commerce Commission in its final report I. C. C. 177, page 697, as not being representative of the traffic in the district. Assuming the correctness of that, I think the contrary is true, namely, that other traffic in the district cannot be considered as representative of the Chicago Junction Railway or of the district as a whole. (Tr. 2870.)

In the study cars as compared with other cars there seems to be such a divergence of characteristics between the two as to clearly indicate that the study is not representative. A summary of the data presented by carriers in their exhibits 7-A and 11-A indicates that for study cars the so-called present revenue per hundred pounds was 2.6 cents, while for the other cars it was exactly half of that, or 1.3 cents; also that proposed revenue per hundred pounds for the study cars, one-line, was 3 cents, while for other cars 1.7 cents. As to the average car haul in miles, the exhibits indicated that study cars traveled 13.12 miles on the average, while other cars traveled 6.49 miles—a

very great difference. (Tr. 2870-2871.) In comparing study cars, one-line, with other cars as to rate structures, [fol. 1279] dealing with tonnage expressed in percentages of total tonnage of one-line study cars and a separate computation for the other cars, I find, for example, that traffic moving in one-line hauls under the present "over Lowrey" and the proposed Lowrey—on the study cars, 54 per cent of the tonnage moved under these rates, while on other cars only about half of 1 per cent moved on that rate structure—.57 per cent. Also the rate structure under-Lowrey present and proposed under Lowrey, on study cars, 8.3 per cent of the tonnage was carried in study cars, while of the other cars 64 per cent were listed under that rate structure. So far as the rate structure is concerned, one cannot compare study cars with other cars, and when the two are combined I believe the study cars cannot be said to be representative of the composite. (Tr. 2871.) In the last group, where present rate schedule is below Lowrey, and the proposed Lowrey, wherein 8 per cent of the study cars were found, I made a further segregation of that item dealing with one group, which is the Illinois intrastate movement. (Tr. 2871.) Of that group there were 204 cars included in the study, representing 2 per cent of the tonnage, and the group contained 4681 cars of other non-study cars, representing 63.5 per cent of the tonnage. Comparing those in further detail, dealing first in totals, I found that the average haul for the 204 study cars was 12.51 miles; compared with 4.45 miles in the other group. (Tr. 2872.)

As to present revenue per car, the study group showed $13.99, as compared with $7.18 for the other. Proposed revenue study group, $29.95 per car, as compared with $7.69 for the other. I understand the other group, as shown by the carriers in their Exhibit 11-A, includes the Chicago Junction. The 204 cars in the study group included 56 cars of pig iron and 148 of miscellaneous com- [fol. 1280] modities, while out of the 4681 other cars 916 were packing house products, 23 fresh meat, 32 other animal products, 478 coke, 423 clay, gravel, sand and stone, and 2579 miscellaneous. I am not giving every item, but some of the more important ones. Carriers' Exhibit 7-A, page 11, shows total switching cost of the 204 cars studied average $13.97 per car. It is impossible to assume that the

916 packing house product non-study cars with the then present revenue of $3.41 per car would likely cost $13.97 to move, and taking average switching cost of all cars in the study, of $15.94, it seems still more impossible that that would be representative of the 916 packing house products cars, or for the whole group of 4681 where their present revenue was $7.18 and proposed only $7.69 per car. The record shows 11,950 one line haul cars in the study, of which 7,093 were Elgin, Joilet and Eastern movements and of this latter number, 6,854 moved outside the district, or 57 per cent of the total one line haul cars in the study actually moved outside the district. (Tr. 2873-2874.) As to two line and three line hauls we cannot determine from the record how many Elgin, Joilet & Eastern cars were involved in movements outside the district; but the record shows that in the 11,483 two line hauls, 1,264 were Elgin, Joilet and Eastern cars and of three line hauls, totaling 2,733, there were 750 Elgin, Joilet & Eastern movements. The terms "present" and "proposed" revenues that I have used are the terms that relate to present and proposed revenues as indicated in the carriers original exhibits 7-A and 11-A. As to separation of various engine hour costs between industries service and general service including transfer and classification, the record shows there should have been some adjustment of cost because of this claim made by the shippers and which was also conceded in part by the carriers. (Tr. 2874.) A rather substantial amount was conceded by [fol. 1281] the carriers. This involved the use of tracks owned by an industry as well as the use of some smaller engines in some cases in industry service. As to the cost study conducted in one week of 1927 being fairly applicable to traffic moving in 1926, there may be considerable doubt. The record shows many instances where rather abnormal costs were developed in the one week test period which were then applied to a large volume of cars moving in September 1926. One special illustration is the industry switching at Albert Schwill & Co., which the order of the Illinois Commerce Commission refers to. All of these things have not been pointed out before as I understand it. The point regarding the inclusion of the Elgin, Joliet & Eastern and taking one week of cost study and applying it to a month's traffic were pointed out. (Tr. 2875-2876.) The carriers presented a claim for additional cost to cover transportation

of locomotive fuel based on the difference of average engine hour cost for fuel as between 7 trunk lines and 8 industrial roads. This difference of $1.08 per engine hour was converted into the total claimed by carriers as representing cost of transportation of locomotive fuel used by trunk lines where the coal moved over their rails. (Tr. 2876.) This difference seems to be a fact that may depend upon many things and does not necessarily indicate exclusion of transportation costs on trunk lines. (Tr. 2876-2877.) Rock Island engine hour cost for fuel was $1.83 while Indiana Harbor Belt, Blue Island hump engine hour cost for fuel was only $1.31 and that cost is supposed to include transportation of locomotive fuel. (Tr. 2877.) Chicago & Northwestern average engine hour cost was $1.65, Chicago West Pullman & Southern, $1.58, Chicago, Burlington & Quincy, general yard cost, $1.51, Chicago, Milwaukee & St. Paul, Milwaukee division cost is $1.45, and Pennsylvania railroad, 55th and 59th st. yard cost is $1.44, all greater than [fol. 1282] the cost on the Indiana Harbor Belt, some greater than the Chicago West Pullman & Southern and one greater than the Chicago Short Line, which is $1.75. The basic cost of fuel is a very important factor in determining the difference between different railroads and principally the difference between different railroads. (Tr. 2878.) Cost of handling, heating values of various coals, quantities of coal consumed by various types of locomotives and amount of nonproductive engine time as related to net engine hours are also factors used as a basis for this unit cost. In view of these several factors, entering into the fuel cost per engine hour, I believe it is only a guess to say that any calculation based on those averages might represent the transportation cost. There were other things in the record, one of them dealing with certain errors in transfer cost which I think was of some importance. It may appear somewhat minor, but it is very difficult to say whether some of these things would result in a great change in the cost or only a minor change. To illustrate this, that engine making transfer runs would pull into a yard at 9 o'clock in the morning with a string of cars, recording their arrival time as 9 o'clock and after changing, their string of cars and picking up others, would depart for another yard showing on their reports that they departed also at 9 o'clock. Many cases like that were in the record and the effect cannot be told. Transfer costs must be overstated

by reason of that kind of record keeping, but possibly the classification cost has been understated; and to what extent that would affect the total, I do not think anyone can tell. We have found many cases of that kind on the Pennsylvania and Indiana Harbor Belt, as indicated in Exhibit 84, pages 204 and 193. I could not state what percentage of transfer runs were included, or were reported in that way. We could not examine all transfer runs as there are thou- [fol. 1283] sands of them in detailed working papers of the 15 carriers. There were a great number on those two roads where the time was shown in that way. There are several pages of them listed in Exhibit 83. One of the major items of cost included in the total was the so called car detention or maintenance and depreciation of freight cars. It is the one that dealt with the time element and was mentioned in the report. (Tr. 2879.) The carriers based their cost entirely on the element of time. It ought to be based somewhat, to some extent at least, to the element of use made of each car. The evidence showed these cars in the switching district apparently move but a short distance on the average every day and spend a great deal of their time standing on the tracks and in my opinion the time element is not a fair way to apportion this kind of expense to this traffic. There was some evidence of one or two railroad men indicating some study of damage to cars in the district but it was very meagre according to my recollection. There are several exceptions to 64¢ per day cost used by the carriers to cover repair costs; first, this does not give consideration to the time these cars spent upon the Belt, and industrial railroads, but does include repairs. This unit cost is then applied to Belt and industrial railroad movements and the third objection that it has been applied to private line cars. (Tr. 2880.) It might be proper to charge private line cars with some of this cost because car days of private line cars have been included in the division in determining the unit cost. It would have been more proper to exclude car days of the private line cars in arriving at the unit cost. The other important part of the car detention cost is the actual time charged to each of the cars in the study. A careful study of this time element and 2 things are to be pointed out; one is the very large adjustment pertaining principally to the Elgin, Joilet & Eastern, [fol. 1284] in connection with certain coke movements

where that line in compiling costs, charges the entire time of all coke shipments for each one of the cars that made one move or more during the month—the entire time for the whole month was charged against this particular traffic. I made an examination of the calculations of the Elgin, Joilet & Eastern in this matter and found many cases where these cars that were charged to the switching traffic for the 30 days during the month of September, actually made a great number of intra plant movements, at the Gary plant of the Illinois Steel Company and based upon these, in my study I found an average number of days per movement of 3.16 was the approximate average involved in the movements included in this case as against the average of 7.06 days which the Elgin, Joilet & Eastern charged to each of the cars moving in the switching district traffic. (Tr. 2881.) My particular examination on which I base the 3.16 days figure included only 43 cars. We examined the records of the company as to their moves in general dealing with the movements but as to this particular calculation, if that is what you mean, it dealt with 43 cars, making the movement from Gary to South Chicago. That however, does not represent the total movements we checked because many of the 43 cars made certain intraplant movements in Gary, 1 car, Elgin, Joilet & Eastern, No. 9350, hauled 2 loads of coke within the plant within the 2nd and the 5th and 4 moved within the plant between the 12th and the 17th. So that it made 6 moves in the plant and 5 moves during the month, between Gary and South Chicago, so while we examined these 43 moves between Gary and South Chicago, it included quite a number of moves within the plant. (Tr. 2882.)

Examiner Faul: We will adjourn at this time until 9:30 tomorrow morning, May 6, 1932. (Tr. 2883.)

[fol. 1285] Hearing reconvened at Chicago, Illinois, May 6, 1932.

K. E. Tholin resumed the stand.

Direct examination (continued):

By Mr. Walter:

Car detention on the Elgin, Joliet & Eastern as far as the very heavy coke movement was concerned was figured under

a method entirely different from that used in general by the carriers; practically the entire month's time of most of the coke cars on the Elgin, Joliet & Eastern, was charged to intradistrict traffic; there were 922 cars for which the entire month's time was charged to intra district traffic. (Tr. 2884.) These same cars handled besides the 3,955 carloads intradistrict traffic, 4,990 coke movements within the Gary plant of the Illinois Steel Company (Tr. 2884), and no allowance was made for the time they spent in the Illinois Steel Company's plant. My best judgment of the excess cost included in the one line haul car detention for all carriers based on this error of the Elgin, Joliet & Eastern, approximates $10,000.00. Referring to car detention on the other carriers we made an examination of a great many cars and found many various kinds of errors. A good deal of idle time was included, that the formula used by the carriers did not provide for, and there was time of private cars as being on the tracks of the carriers when they were actually on the tracks of the owning companies. (Tr. 2885.) There was time included for reconsigned cars preceding the time of actual reconsignment which belonged to the previous movement. Also, they included time for cars while on repair tracks. There were many other adjustments such as clerical errors. These cars that were examined covered most of the roads in the state and as a [fol. 1286] result of this study which we made was covered by my testimony and by Exhibit No. 96 in this case, and it is my opinion that the car detention time of other carriers included in the cost study showed an excess of approximately 10 to 15 per cent. (Tr. 2885.) There is evidence in the record that quite a little time was lost by switching engines waiting for clearance over main line tracks as well as evidence regarding demurrage and weighing. These items may not be material but some attempt should have been made to allocate cars to the intradistrict switching because of them and share the cost of the operating expense to through freight or passenger movements and also to give proper credit for demurrage and weigh revenue to this intradistrict switching, where the cost of performing this service is included in the cost study. The cost per hundred pounds originally submitted in Exhibit 7-A for one line hauls was 1.85 cents, but the carriers by their adjustment raised this to 1.93 cents. The shippers in

their claims reduced these costs to 1.54 cents. The Interstate Commerce Commission in its final report indicated that if full effect were given to the modification submitted by both carriers and shippers of any figures in the originally submitted cost, it would be 2.2 mills per hundred pounds for the average one line haul for 13.19 miles.

Applying that reduction of 2.2 mills to one line hauls, would reduce the original cost to the carriers to 1.63 cents per hundred pounds. Carriers original cost for 2 line hauls was 2.25 cents per hundred pounds, which they raised to 2.38 cents by their added cost and which shippers claim should be but 1.91 cents per hundred pounds. The Interstate Commerce Commission, by the process of averaging indicates that on 2 line hauls, there should be a reduction of 2.2 mills from the original cost of 2.25 cents, making the adjusted cost 2.03 cents per hundred pounds. For 3 line hauls, the carriers original cost was 2.52 cents per hun-
[fol. 1287] dred pounds, which they raised to 2.87 cents. The shippers claimed it should be 2.20 cents and with an adjustment (Tr. 2887) based on the average shown in the Interstate Commerce Commission report, of an increase of .3 mills, the adjusted cost would be 2.55 cents per hundred pounds. (Tr. 2887-2888.) This is possibly more or less an arbitrary rule of -thumb- method for determining the reasonableness of cost. It is simply an averaging process. The operating ratio used by the carriers was based entirely upon the operating ratio of the entire railroad system of the United States. This ratio as actually worked out from reports of the various carriers was somewhat greater than the operating ratio which the carriers finally granted would be a proper one to produce a 5.75 per cent rate of return. The carriers claimed that a ratio of 67.4 per cent would produce the 5.75 per cent return. (Tr. 2888.) This was a small error on their part and the ratio should have been 69.2 per cent. The only evidence of operating ratio offered by the carriers dealt with the country as a whole and it is my opinion that they should have introduced density of traffic comparing the Chicago Switching District with the country as a whole, instead of the territory immediately outlying from the Chicago District. (Tr. 2889.) The evidence introduced by the shippers dealing with operating expense would compare the data for the district and the country as a whole. (Tr. 2889.) The evidence intro-

duced by carriers on this point is really of no weight because the comparison is in error.

Two statements appear in the Interstate Commerce Commisson's report regarding high taxes within the district, the difficult operating conditions due to congestion and that this intradistrict switching is somewhat less than 5 per cent of all switching largely made up of industrial [fol. 1288] switching, admittedly the most expensive switching service and there is also a reference in the record, page 132, Exhibit 83, to the effect that the yards of the carriers are not laid out especially for the switching service. (Tr. 2890.) These things tend to indicate that intradistrict switching may be somewhat more costly than other operations but I am not testifying that it is more costly, I am simply referring to what the records show here, (Tr. 2891) and if this traffic is more costly than other operations, the operating ratio may well be higher in such cases than where the operating cost is lower. (Tr. 2891.)

If a shipment in the district cost $40.00 per car, and the amount needed for return on investment was $10.00 per car, we would have an operating ratio of 80 per cent. If the operating cost was increased to $90.00 per car, it would have little effect upon the amount required for the return on the car and in that instance, the operating ratio is 90 per cent. (Tr. 2891.) This was referred to by Mr. Oliver in his testimony and included in the composite exhibits of the carriers and shippers, No. 83, page 129. In addition to these factors, there is considerable evidence that much of the industry track in the district is owned by the shippers and evidence concerning operating ratios on certain switching roads within the district would actually carry a good deal of this particular traffic under review in this proceeding. These operating ratios are considerably higher than those claimed by the carriers and still the switching roads are rather profitable. (Tr. 2892.) Carriers costs have been determined on the basis of certain cars so called study cars. There is quite a disparity between the characteristics of these cars especially on the one line hauls in making a comparison of cost with revenues in a case like this, and I believe it is entirely improper to compare the revenue of all cars with the cost

of only some of them. If comparison is made, it should [fol. 1289] be entirely of study cars, comparing the costs as they are developed with the revenues of the same movement. The Interstate Commerce Commission indicates that it would be desirable to eliminate from a comparison of this kind the effect of the Elgin, Joliet & Eastern. (Tr. 2893.) It is my opinion that it is impossible to eliminate the Elgin, Joliet & Eastern from the figures we have in evidence. The Interstate Commerce Commission indicates that the traffic moving interstate and intrastate Indiana on rates over and above the present and proposed Lowrey basis consists of traffic over that road.

I have attempted to determine how cars would fall in the description of interstate and intrastate movements in Indiana over and above the present and proposed Lowrey basis and the result of that study indicates that for one line hauls, we would have 428 cars of the Elgin, Joliet & Eastern, although the record definitely shows there are 7,093 Elgin, Joliet & Eastern cars in the study. On two line hauls, an elimination of these particular described cars would throw out 1,496, although the record shows there were only 1,264 Elgin, Joliet & Eastern cars in the study. (Tr. 2893.) On three line hauls this process would eliminate 1,201 cars supposed to be Elgin, Joliet & Eastern, though the record shows only 730 Elgin, Joliet & Eastern cars, in the study. These are all cars where the rates both present and proposed are above the Lowrey basis. (Tr. 2894.) Exhibit 7-A, page 4 shows movement of 3,372 cars of coke where present revenue is indicated as 3 cents, being above the present Lowrey basis, but the proposed basis is also indicated as 3 cents which is the Lowrey basis and as to these, the Elgin, Joliet & Eastern one line haul cars did not move on rates both present and proposed over the Lowrey basis. (Tr. 2894.) While these 3,372 cars are not shown on that exhibit to be Elgin, Joliet & Eastern [fol. 1290] cars they are definitely tied up to that road on page 188 of Exhibit 84 as being Elgin, Joliet & Eastern coke movements from Gary to South Chicago. (Tr. 2894.) As a basis for study of the Illinois rates, before the Interstate Commerce Commission makes use of these cost figures in determining Illinois rates, I believe it is entirely unfair to use the table or process on sheet 21 of the mimeographed copy of the final order. (Tr. 2894.) It is a table com-

paring rates, the weight, average revenue, the operating expense and operating ratio. (Tr. 2894.) The table indicates average revenue for one line haul as 2.04 cents per hundred pounds based on present rates. The average revenue of the study cars is 2.59 cents and the Interstate Commerce Commission figures in the table reduce that revenue 55/100 of a cent in the average revenue per hundred pounds for one line cars. Analyzing this reduction which amounts to 21 per cent, I found that .47 cents, due to the inclusion of other nonstudy cars in determining the average and .08 cents, due to the attempt to eliminate the Elgin, Joliet & Eastern. (Tr. 2895.) The table in the order of the Interstate Commerce Commission indicates average revenue of 2.37 cents on the basis of present rates as compared with 2.68 cents actual present revenue of all cars in the study. A reduction of .31 cents or 12 per cent. .07 cents of this results from including the other cars and .24 cent results from attempting to eliminate the Elgin, Joliet and Eastern. On three line hauls the Interstate Commerce Commission report shows average revenue per hundred pounds, based on present rates of 2.89 cents which compares with 3.58 cents of the study cars or a reduction of .69 cents per hundred pounds or 19 per cent. One tenth of a cent of this is due to conclusion of the cars and .59 cents is due to an attempt to eliminate the Elgin, Joliet & Eastern. (Tr. 2895.)

[fol. 1291] In carrier's exhibit 97, they compare the cost of study cars with the revenue of study cars. It is my contention that only study cars should be used for any such comparison.

The present revenue per hundred pounds on one line haul cars is 2.59 cents, compared with the adjusted cost of 1.63 cents indicating an operating ratio of 62.93 per cent, based on the average reductions or increases found in the Interstate Commerce Commission's report or order. (Tr. 2896.) The proposed revenue of carriers for these same movements is 3 cents, indicating an operating ratio based on the proposed rates of 54.33 per cent. For two line hauls, present revenue per hundred pounds is 2.68 cents, compared with adjusted cost of 2.03 cents, indicated an operating ratio of 75.75 per cent. Comparing these adjusted costs with proposed revenue indicated in carriers' exhibits, of 3.69 cents shows operating ratio of 55.01 per cent; on

three line hauls present revenue, 3.58 cents per hundred pounds and comparing the adjusted cost of 2.55 cents with these revenues shows operating ratio of 71.23 per cent the proposed revenues would be 4.33 cents which compared with adjusted cost of 2.55 cents shows operating ratio of 58.89 per cent. All these operating ratios are below the operating ratio claimed by the shippers as proper, based on studies of the 9 switching roads within the district, which was 76.8 per cent. The one line operating ratio based on present revenues would be below the ratio acceptable to the carriers, which they said would be something below 66.67 per cent without exactly stating the figure; but the operating ratio here is 62.93 per cent, based on present revenues for one line hauls. (Tr. 2897.)

In speaking of present revenues, I mean the revenues which were in effect at that time. In every case referring to present revenues, it was the revenue back in 1928 and 1927 when these exhibits were prepared and where I have [fol. 1292] referred to proposed revenues, it means the revenues proposed as indicated in the carriers' Exhibits 7-A and 11-A. The increase from 2½ cents to 3 cents for one line haul is 20 per cent and from 2½ cents to 3½ cents, is a 40 per cent increase and there has been a ten per cent increase in the interdistrict Illinois and interdistrict Indiana rates. Those increases would still further reduce the ratios which I have just referred to. (Tr. 2898.)

Exhibit 105 shows percentage of interstate traffic to total traffic, considerably greater for the periods in November, 1931 and January 1932, than in the month of September, 1926 at which time the percentage of interstate traffic was 40.3 per cent, (Tr. 2898) and Exhibit 105 shows a reduction in percentage of interstate traffic in January, 1932 compared with November, 1931. (Tr. 2899.) It is rather difficult to definitely state the reason for a change of this kind simply by looking at the total figures. There may be considerable difference in commodities and there may be various causes which would affect the shipment of interstate or intrastate traffic. Referring to Exhibit 110, to the extent that that diversion of traffic exists, of course, it will have an effect upon whatever figures are set up on that traffic. I am not qualified to say based on Exhibit 110 that it was or was not a diversion from interstate to intrastate traffic. (Tr. 2899.) If there were no elements

involved, any traffic diverting from interstate to state would have a direct effect and change the percentages to the extent of such diversion. (Tr. 2900.) But in a figure of this kind, there are so many things involved which may affect the movement of traffic that to pin it on a particular thing is just about impossible unless a very careful analysis is made of every fact. From a study of some of these commodities, I find there are a great many of them that have moved in various proportions and the commodities [fol. 1293] moving in interstate traffic do not seem to be the same ones moving in intrastate traffic. But even with those changes shown on page 1, the percentage of interstate traffic was substantially greater than what it was in the former hearing; very much greater. In making these comments regarding the record, I do not want to be understood as being interested in any way or particular except in defense of the Illinois Commerce Commission's order. (Tr. 2900.)

I assisted in gathering data for the preparation of the Illinois Commerce Commission's order, and personally feel that is was a fair order and all elements considered, and I made no attempt to favor any party, carriers or shippers; but have only attempted to look at all facts placed before the Commission, and to the extent that I participated with the Commission, it was my purpose, and it is my conclusion, that its order was fair. (Tr. 2901.) In my investigation made since this 13th Section proceeding was begun, it was not my purpose to undertake to sustain the Illinois Commission's order at any hazard. I have never felt that way in connection with any work on this case, whether now or in the preceding work, that we are bound by the record as it is, and I made an attempt to determine the basis and to determine the facts as they are shown there in the clearest way possible. (Tr. 2901.)

Mr. Davis: I want now to move that all of Mr. Tholin's testimony be stricken out except what he said in regard to Exhibit 105, because it is a reiteration of Exhibit 83 and a reiteration of the argument made by the Illinois Commission, the Indiana Commission, and shippers, in Docket 19610, and a reiteration of points raised in the motion or petition to have a rehearing and in the petition asking to have the tariffs suspended, all of which were [fol. 1294] denied and that is the basis of my asking his

evidence and everything he said be excluded except as to Exhibit 105.

Examiner Faul: Motion overruled.

Mr. Walter: That is all. (Tr. 2903.)

Cross-examination.

By Mr. Davis:

I do not believe all figures that I quoted regarding single-line cars moving particularly on the Chicago Junction appear in Exhibit 83; some of them are from Exhibit 13 and Exhibit 9. I think all the figures pertaining to that question were in the record. (Tr. 2903.) We contended in the original hearing that cars moving in single-line hauls on the Chicago Junction should have been included. All the 1674 cars moving on the Chicago Junction, the average car haul in miles, was 1.6 miles, and the average ton mile haul 2.3. Those were the averages for the 1764 cars other than iron and steel, and only 14 cars of the latter, and there was a little longer average haul on those (Tr. 2904) single-line on the Chicago Junction, being 2.1 miles. (Tr. 2905.) The 64-cent per car charge was also contested in Exhibit 83, and in the oral argument before the Interstate Commerce Commission; and that is generally true as to what I said regarding demurrage, the clearance of main tracks for passenger trains and the delaying of freight trains; but I am particularly here interested in the Illinois rates. It is my opinion that the Interstate Commerce Commission was in error in making its decision. I presume each of us think we are right, and I also think I am right. I think the Interstate Commerce Commission should have used my conclusion and my figures instead of the figures they did use; that is my contention. (Tr. 2905-2906.)

[fol. 1295.] Of all of these figures I quoted regarding costs, both the carriers' original figures, their adjusted figures, and the shippers' adjusted figures, and the average on the so-called rule-of-thumb method, in every instance the cost of the two-line haul is quoted higher than the cost of the one-line haul. I cannot say it necessarily would cost more for a two-line haul than for a single-line haul. There may be some very short and there may be some very long two-

line hauls, and the same way for a one-line haul. Some of those roads cover a good deal of territory.

In my conference with the Illinois Commission and my recommendations from my investigation in regard to this case, I do not believe there was ever a discussion or a reference from the cost study or otherwise as to a direct difference between a single-line cost and the two-line cost. (Tr. 2907.) The Illinois Commission had before it the shippers' figures as to single-line and two-line haul costs. I would not say that the figures showed a difference, because in our opinion the figures were so unreliable we could not tell definitely whether one was right or one was wrong or all of them were wrong; and in saying the figures were unreliable I have reference to all of them, whether carriers or shippers. So far as shippers' figures were concerned, concerning which you speak, the record shows that they were not handicapped in obtaining a figure and producing figures, and I have attempted not to be prejudiced in favor of one side or the other, shippers or carriers. I have not said that shippers' figures are more reliable than the carriers'. (Tr. 2908.) In going down the list of various items, taking single-line hauls I find that was an additional [fol. 1296] cost claimed, amounting to $5501.14, made by the carriers, to which the shippers agreed, and I find $1469.63 of other statements in costs to which both parties agreed. In reviewing these items I felt they probably were somewhere near the approximate figures, although getting down to the item of transportation of locomotive fuel, where the carriers claimed on one-line haul $1862.90 additional cost, I find that the shippers agreed with the carriers on that item. Exhibit 5 in its entirety eliminated the element of profit from the item they gave you in their item of allocated profit. On that point we disagreed with both carriers and shippers, because I do not think the calculation of cost on transportation of locomotive fuel has any value at all. There are so many uncertainties in it, so I did not agree with either party on that. As to engine-hour costs of industrial switching, I find the shippers' reduction to be $9447.61 and the carriers agreed to $4664.01 of that, or just about half. (Tr. 2909.) My recollection of that study was that the shippers' claimed adjustment appeared to be somewhat excessive. It did not seem that they had a sound basis for everything in their calculation, and as I recall

now, I was inclined to accept the carriers' figures for the adjustment.

As to car detention the shippers claimed $21,167.43 reduction. The carriers admitted nothing. On one-line hauls I believe that about $10,000.00 should be cut out on account of the Elgin, Joliet & Eastern. The shippers did not go into the fact of time to any great extent to establish proof as to excess time, although Mr. Oliver did comment about it, so the item was not covered by shippers. The other element of adjustment on the other roads was not covered by shippers either. As to the formula used by shippers, [fol. 1297] there is a good deal of question as to what a right formula is, as no one has developed any very accurate formula.

Most of these date back quite a few years. I think the general type of formula used by the shippers is better than the method used by the carriers. It involves some estimates. I do not recall just how many, but my opinion of it was that these estimates, these individual estimates, were carefully made and were a nearer approach to the proper answer than to take over all estimates of the element of time, which was the sole factor in determining the costs of repairs and depreciation of cars; so as a general proposition, I thought that the result as shown by the shippers had some merit. (Tr. 2910-2911.) The carriers of course would not admit anything.

Exhibit 83 shows many cases under the title of Illinois Commerce Commission position, the words "No comment." In other places there are some comments. Where the words "No comment" appear it meant that we felt the subject matter was clearly brought out by the statement of the two parties as to the position of carriers and the shippers; and we thought it unnecessary for us to take up space and go into the same matter again. That is what the words "No comment" mean in this exhibit. (Tr. 2911.)

In Exhibit 83, where we made answer other than "No comment," I cannot say that such answers favored the shippers' side of the case. I will have to go through it and see what our answers or statements were, but before looking I will say there was no intention to favor either party. The exhibit will show what the comments were, but the facts are a different matter. We tried to study and set forth the facts, that was what the exhibit was sup-

posed to do; it was an attempt for all parties to get to-[fol. 1298] gether and iron out the difficulties that came up. The Commission was to draw conclusions from the exhibit. (Tr. 2912.)

I cannot recall that the Illinois Commerce Commission at any time objected to the exclusion of the Elgin, Joliet & Eastern in the cost study, when the carriers offered either to exclude it in toto or have it in in toto. (Tr. 2913.) I wish I knew what the inclusion of the Elgin, Joliet & Eastern in the cost study was. There is no way to determine whether its inclusion increased or reduced one-line or two- or three-line hauls. (Tr. 2914.) As to whether the Illinois Commerce Commission wanted the Elgin, Joliet & Eastern eliminated, when I was working on the case, I learned that the railroads had prepared some figures showing the effect of excluding the Elgin, Joliet & Eastern and I attempted to get them, but was refused, and it dragged along for a week or two, and I was finally told that the papers were destroyed. (Tr. 2915.) If the Elgin, Joliet & Eastern cost study cars had been eliminated it would have required the elimination of the elements performed by other carriers on the same cars as to two- and three-line hauls. (Tr. 2916.)

Examiner Faul: I wonder if you are not wasting time.

Mr. Walter: I don't think so.

Mr. Davis: I think so.

Mr. Walter: We hope the Commission will conclude, before it gets through, that the Elgin, Joliet & Eastern has destroyed the value of the testimony of the cost study.

Examiner Faul: This case is based on 15 so-called representative lines on a cost study made over those lines, which were supposed to be representative. It is true in the early stages of the proceeding some contention was made as to the Elgin, Joliet & Eastern and the Chicago [fol. 1299] Junction, but the fact remains our cost study is based on these 15 roads and we are not able now to change these cost figures which were developed from that cost study made on those 15 roads. (Tr. 2916.)

The Witness: The matter of operating ratio, and involving those things you speak of, taxes and investment, were discussed and set forth both in the shippers' and carriers' position in Exhibit 83; and the same is true in regard to industrial tracks that were owned by the carriers

and those owned by the shippers; whatever it was was involved, the movement of cars and the associated revenues and costs pertaining to them, and there has not been any segregation of movement or any statistics according to localities, except such as might be indicated on the one-line where the moves were locally over a particular railroad. (Tr. 2917.) The Commission's order, of course, was dealing with the rate structure as it was at the time of the writing of the order, and the statistics that I said before were compiled were in the total for the district and not segregated. (Tr. 2918.) As to trying to find out how much it cost to handle single-line movements, the carriers were the ones who prepared the cost study, and they were probably doing that so far as the Commission was concerned, but we were checking data prepared by the carriers. (Tr. 2918-2919.) We made no attempt to divide the carriers' data further than they divided it themselves, and the cost figures covered one-, two- and three-line hauls. (Tr. 2919.)

Redirect examination.

By Mr. Walter:

There was nothing in the record as to the value of the carriers' property as between that used in intradistrict service and that used in other service. There was no sep- [fol. 1300] aration between the switching intrastate and switching interstate as to valuation. (Tr. 2919.) I am here at the direction of the Illinois Commerce Commission to support our order. Our order in some respects differs from the Interstate Commerce Commission's order, and in defending our own we may feel the Interstate Commerce Commission's order may not be correct; but of course we are not concerned with interstate rates and there may be some variation in the facts in the intrastate rates that might interest the Interstate Commerce Commission.

Examiner Faul: At this point it might be well to state that this was a cooperative case, and the three commissions, Interstate, Illinois Commerce, and Indiana Commission, attempted to cooperate in the case. I just want to make that statement at this time.

Mr. Davis: They did cooperate in taking evidence and listening to oral argument; both commissions were represented on the bench in the case.

Mr. H. J. Campbell: That is subject to the further statement that their cooperation did not cover issues which were not before the state commissions; that is, the exceptions were never before them; the exceptions to the rates which were included as exceptions to the Lowrey basis were never before the Illinois Commerce Commission or the Public Service Commission of Indiana, so there could not have been cooperation as to that. (Tr. 2920.)

Examiner Faul: I think the record is clear that the Indiana and Illinois state commissions had only certain commodities under suspension, and those were the only commodities they had under consideration.

Mr. Shafer: And any order beyond those would be un-
[fol. 1301] lawful, illegal orders.

Examiner Faul: I think the record is clear on that. (Tr. 2921.)

The Witness (continuing): I testified that these particular figures of the carriers, and the carriers' adjusted and shippers' adjusted figures, and this other average cost, show higher for a two-line haul than for a one-line haul. I don't know that I reached any conclusion except that the figures themselves in one case were larger than in the other case. (Tr. 2921.) I did not testify this morning that as a result of an exhaustive study the figures in connection with the two-line haul cost exceeded the one-line. What I meant to say was, dealing for example with carriers' original figures in Exhibit 7-A, that their exhibit shows cost of a two-line haul was 2.25 cents, which is greater than the figure for a one-line haul of 1.85 cents. That is the only character of testimony that I gave this morning. I also gave this morning figures of shippers indicating 1.54 cents as against 1.91 cents, but I decided on this first instance as an illustration only. The same situation exists between the one- and two-line hauls for both the carriers' original cost in Exhibit 7-A, their modified cost based on Exhibit 83, and corrections, and shippers' modified costs based on Exhibit 83 and corrections, and the average of the two as computed by the Interstate Commerce Commission, giving consideration to all of the claims of shippers and carriers. (Tr. 2922.) I do not believe it is a fair deduction from my testimony that that would show there should be a difference in the one-line rate and the two-line rate, because I have not taken the position that I know what the

costs are for either the one- or the two-line hauls, because I believe these records are so incomplete you cannot rea- [fol. 1302] sonably tell without making a great many guesses as to just what a reasonable cost might be, or whether the two-line would then be greater or less or the same, I would not attempt to say. The only estimates and approximations I have indulged in are those I have mentioned right here. I have not here used any formula. I am simply quoting the carriers' original and revised figures, and the shippers' claims, and the adjustment which the Interstate Commerce Commission indicated might be of some consideration; at least they included it in their order, and I have simply made computations from those figures.

I did not use a different method in arriving at my engine-hour costs. (Tr. 2923.) I have not here testified to any claimed correction of any of these figures. I pointed out there are claims on both sides, carriers and shippers, of various amounts, but I have not here testified to what I consider the proper adjustment of those claims, because I did not believe the record contained sufficient data on which to come to a decision. The record shows that two-line hauls are longer on the average than one-line hauls on the average. These averages are for the 15 carriers, and the record is based on those 15 carriers for one week. (Tr. 2924.) There is an interchange of the loaded car in the two-line haul, and there are many of those one-line hauls that may have one or two interchanges of the empty car. As a cost expert I would not say it is a fair assumption that a two-line haul would cost more than a one-line haul. I have not made a careful study; in the abstract you might assume it would, but a one-line haul might travel through 6 base yards on one railroad, while a two-line haul might not travel through more than two; and the two-line haul might travel through 6 base yards. It would appear that [fol. 1303] a two-line haul might be more costly than a one-line haul, but there is no different rule one way or the other. Looking at the rate structure in use all these years, where the same rate has been applied, I would naturally assume costs entered into the rate structure, and it might have been considered at one time that there was not any more cost; I don't know what was back of the rate structure that has been in use so many years.

Leaving the cost study out entirely, and everything else being equal, including distance, and with an interchange adding some distance, and costs on each of the railroads being equal, I would say it would cost more to handle a two-line haul than a one-line haul. (Tr. 2926.) But in view of the various costs shown by various carriers, and the varying amounts for each of the classes of service, classification and transfer and industrial service, it would be vary problematical as to whether everything else would be on the same basis. (Tr. 2926.) As to my study of the case, indicating that the cost for a two-line haul was different than for one-line, I believe I have answered that, in that I have said I cannot determine from this record what the true costs are. I have indicated that the costs as displayed by carriers and by shippers, and this average I have spoken of, in each instance are greater on two-line than on one-line hauls. As to the one-line rate being too high, or the two-line rate too low, it appears from these figures I quoted that there is a favorable operating ratio indicated by the present rates on the one-line haul, and likely a great possibility that the one-line haul rates are too high, as the figures I quoted indicate an operating ratio of 62.93 per cent on the so-called present rate, meaning the rate in existence [fol. 1304] in 1928. (Tr. 2927.) And my answer in regard to the cost of a three-line haul would be the same as in regard to one- and two-line hauls as to the comparison of the costs. (Tr. 2927-2928.) I am principally concerned with the cost study. Am connected with the accounting department of the Illinois Commerce Commission and not with the rate department, but am somewhat familiar with the fact that rates do not always follow costs in their entirety, and there may be circumstances in the district where one- and two-line haul rates ought to be the same. I believe the question of traffic studies and rates that will move the traffic, and possibly costs, in my opinion should be given very careful consideration. I am speaking of rates in the district, but I would not comment as to what the rate department might consider as proper in fixing the rates. (Tr. 2928.)

Mr. Shafer: We are getting more and more—I think it is a fair observation from the decisions of the Commission—against a higher rate for the two-line than one-line in making rates, whether they be by one-line or two-lines.

Examiner Faul: Would you add to that, in connection with line-haul movements?

Mr. Shafer: Transportation of any sort; I do not regard the question of one-line or two-line being any different, whether it is 5 miles or 500; the rates have to be measured so the carriers can live and the traffic move. (Tr. 2929.)

C. R. LIVINGHOUSE, sworn and testified as follows:

Direct examination.

By Mr. Hufsmith:

[fol. 1305] Am examiner in chief of traffic bureau for the Public Service Commission of Indiana, and have been for about 5 years. (Tr. 2929.) During that time have been the head of the tariff department of the rail service, as well as tariff department of the utility department of the Commission. All tariffs applying to all railroads and public utilities are under the direct supervision of my office. Prior to my connection with the Commission I had railroad experience from about 1907 to 1913, industrial traffic experience from 1913 to 1927 or 1928. My employment by the carriers was not in the operating department, but in contact with the operating department. I am familiar with the present proceedings and the rates involved. I followed this entire proceeding outside of the first hearing, I believe in May, 1928. (Tr. 2930.) Outside of the first hearing I participated in the joint hearing held in this proceeding originally, with the Interstate Commerce Commission and the Illinois Commerce Commission, as the examiner for the Indiana Commission. (Tr. 2930.) The rates involved in the original proceeding as heard by the Indiana Commission were the rates we suspended. We suspended only the rates in tariffs filed by the carriers, none of which included any of the exceptions. There was not at that time, nor has there since been, any hearing before the Indiana Commission with reference to the exceptions just referred to, and the order prepared by the Indiana Commission as a result of the hearings did not pertain to the exceptions mentioned. Its order dealt only with the tariffs before that Commission. As I recall, the Elgin, Joilet & Eastern was not a party to the tariffs under suspension (Tr. 2931), and

their line-haul rates were not involved in the proceeding because they were outside of the district. The Indiana Commission entered its order pursuant to that hearing August [fol. 1306] 26, 1931. The Indiana code makes provision for applications for the judicial review of administrative orders of the Indiana Commission, and for the filing of a petition for rehearing. No petition for rehearing has ever been filed. There is a provision in the Indiana code for an appeal from an order of the Commission, which our Supreme Court passed upon, the 27th appeal provision. (Tr. 2932.) If such an appeal had been taken I would know of that fact, because in appeals the requirement is that the record heard by the examiner be forwarded to the upper court. To my knowledge no such appeal was taken. To my knowledge the carriers have not taken any action before the Indiana Commission nor the Indiana courts to test the correctness of the Commission's order pursuant to the joint hearing.

About 6 per cent of the traffic moving in the Chicago switching district moves in Indiana; that is purely Indiana intrastate. I represent and am authorized to speak in this hearing for the Public Service Commission of Indiana (Tr. 2933), which promulgated the order for the Indiana rates intrastate, pursuant to the hearing that we mentioned. The Indiana Commission, by approval of its order, expressed its opinion that the records so far as the Indiana rates were concerned, did not justify the proposed increases, and ordered them cancelled. That is still its opinion. It has not been challenged in any state court. Have had several cases in my department in which (Tr. 2934) the carriers prepared and offered as exhibits, cost studies which, under my supervision, have been analyzed by cost accountants of the Commission; and the cost accounting department has prepared certain exhibits in the state of Indiana.

In my judgment there is nothing constant about the cost [fol. 1307] of switching movements within a given switching district. In so far as they came to us in our proceedings and hearings I have had occasion to observe and ascertain the changes from time to time that have taken place in the various switching districts in Indiana.

Mr. Hufsmith: In your judgment, Mr. Livinghouse, I will ask you if a rate for an intrastate switching movement within a switching district, predicated and prepared upon

cost figures in a test period of 1927 or 1928, and analyzed, would be accepted by you as the cost (Tr. 2935) and the fair rate for the movements of that traffic in 1931 or at the present time?

Mr. Davis: I object to that.

Examiner Faul: The witness may answer.

The Witness (continuing): I don't think it will reflect the true situation, and it would not have any bearing or weight as far as reflecting conditions in 1931 or 1932 are concerned. That statement is based on changed conditions, upon changes in volume of traffic, changes in the cost of labor and operation and other items that might be different at any different time. In the Evansville switching case the cost study was prepared upon 1927 and 1928 figures as against the 1931 figures, and in a general way it is my recollection that the carriers in their study before the special master, developed costs somewhere in excess of $7.00 (Tr. 2936), and the accountants for the Commission, taking the same figures, brought the costs down to somewhere in the neighborhood of $4.00, and the master did not take the original cost produced by the carrier on account of the lapse of time, so a new study was made out which those figures developed. The cost figures in 1931 were somewhere around $7.50 in the neighborhood of $7.50. The figures referred to were in connection with the Chicago & Eastern [fol. 1308] Illinois Railroad at Evansville, and the figures in 1927 and 1928 were lower than the 1931 cost study, according to the carriers, but not according to the Commission's figures. The carriers' figures in 1931 showed higher than what they claimed in 1928, and the Commission made no figures in 1931 except to refigure the cost study. (Tr. 2937.) The Commission shaved down the carriers' figures in 1931 the same as they did in 1927 and 1928. In the shaving process in 1927 and 1928 the cost reached was some $7.00, and the cost submitted to the Master in 1931 was some $4.00-plus. The Chicago & Eastern Illinois cost figures in 1928 at Evansville were around $7.00. The Commission did not make any cost figures and all the state commission had before it as to the costs were the figures introduced by the carriers, showing about $7.00. (Tr. 2938.) But when this case got into the court the master wanted another cost statement, and in that other cost statement the carriers showed that it was around $7.60, somewhere between $7.00

and $8.00, and then the Commission introduced figures to offset that and the figures the Commission introduced were somewhere in the neighborhood of $4.00. This order of the Commission was attacked in the state court and a judicial proceeding and trial was had in the Vanderburgh Superior Court, at which the Commission did offer its analysis of the carriers' cost study for 1927 and 1928. If I remember correctly, our analysis of the 1928 and 1929 costs showed higher costs than the 1931 analysis. (Tr. 2940.)

Cross-examination.

By Mr. Cardy:

The Indiana Commission permitted the maximum Ex Parte 103 increases without exception. The order became effective around January 4, 1932, and outside of the application for Ex Parte 103 increases there has been no appli- [fol. 1309] cation by carriers for an increase in switching rates intrastate in Indiana. (Tr. 2941.) There were no switching rates before the Indiana Public Service Commission on commodities not included in the all-commodity Lowrey basis. It did not have before it, as I recall, any rates for switching grain intrastate in Indiana. I have no recollection of the carriers filing tariffs with the Public Service Commission of Indiana, seeking to increase the grain switching rates within Indiana, subsequent to the institution of 19610. (Tr. 2941.)

Examination by Examiner Faul:

Our position is similar to that taken by the Illinois Commission. The Indiana Commission is here and we are bound by statute to sustain our order. It is our position that the record is not sufficiently complete from which to make any different deductions. We could not draw any conclusions to satisfy ourselves that the earnings or anything else, and cost, would justify any change in the Indiana rates, any different conclusion. (Tr. 2942.) As to all of them, so far as costs are concerned, we do not figure that costs are anything more than a criterion of what it might possibly be. There is practically no difference in the views of the Indiana Commission and the views of the Illinois Commission. (Tr. 2942.) I do not know whether

the cost study is representative of present-day conditions. I say that the time that has elapsed is so great, and conditions have changed so, that a cost study of that earlier period I do not think is proper to base a decision on at this time. (Tr. 2943.) We desire an up-to-date cost study, and so petitioned the Commission, but were refused, and in that [fol. 1310] we asked for a cost study to cover not only the 15 lines involved in the prior study, but to cover all carriers included in the switching district that the cost study covered, and longer period of time than the prior one, because the time was not sufficiently long to determine the real true cost basis; and it is possibly true that the time consumed in completing this enlarged cost study would be at least as long or possibly longer than the prior cost study consumed. (Tr. 2943.) As to the new cost study made at this time, reflecting conditions that would exist at its completion, I don't think we would be going around again in a circle (Tr. 2943), because in order to base rates we must base them on actual conditions; if the costs today are higher the carriers should be entitled to higher rates, and the transportation would probably seek other forms of transportation than to use the rails. The rates are established by an administrative board with a view to application in the future. (Tr. 2944.) I have no way of knowing, but I do not think costs and figures I prepared for 1927 and 1928 traffic would be comparable with the cost of car movements today. I know there has been a material change in the cost of commodities, and many items of operating expenses in all switching districts. There is no way of expressing a different opinion as to how long present conditions as to movement of traffic operating costs, etc., will continue in the Chicago district, or when operating conditions of 1927 and 1928 will return. (Tr. 2945.) I have watched traffic move and in two years it might get back to the stability of 1927 and 1928, or it might be 3 or 4 years, and it might be a longer time, and in the meantime the application of a rate applied on 1927 and 1928 costs would not be a rate, I do not think, that would reflect the present [fol. 1311] conditions. If the costs are up because of decreased traffic the rates should be decreased, and vice versa. On account of changed conditions it is my assumption that the record here is not a fair one on which to compute costs of operating traffic in Indiana, Illinois, or interstate com-

merce at this time because of changed conditions. (Tr. 2946.)

Cross-examination.

By Mr. Davis:

So far as the Indiana Commission is concerned, our record in this case closed in September 1928, (Tr. 2946) and the decision in the case was August 26, 1931, that is, not saying that it would take us 3 years to decide all cases. It took 2 years on this one on a joint record. We asked in our motion for a cost study and that more than doubled the time and business covered in the prior cost study. If we had a cost study taking double the amount of time, it might or might not take 3 years to decide the matter, but there would be no reason for the carriers not charging and receiving reasonable rates in that time. Conditions in many switching communities change frequently probably not from day to day (Tr. 2947), but there will be changes from month to month. A study of the February movement might not be applicable to August. If we made a study for December it would not be applicable for July and because one made in 1930 would not be applicable in 1931 is the reason we asked for a more complete cost study. A study made for 1930 would not be applicable in 1931, and a cost study made in 1932 with the decision reached in 1933 in all probability the 1932 cost study would not be applicable to the 1933 decision unless it has become more stable. Conditions change from month to month. I am here, representing the Indiana Commissioners, the shippers and the carriers also. (Tr. [fol. 1312] 2948.) As a representative of the Indiana Commission, I signed Exhibit 83, I think. We conferred with the cost study committee consisting of shippers and carriers but not quite as regularly as did the Illinois Commerce Commission representative. Our Commission collaborated with the Illinois Commission on the decision rendered by each before they were handed down; not only before that time but since and our motion for a cost study was practically verbatim that of the Illinois Commerce Commission. I am not familiar with Mr. Walter's petition for a cost study (Tr. 2949), though I received a copy of it.

Mr. Davis: In other words, the two state Commissions and the shippers have been working more or less together on this case, is that it?

Mr. Walter: What do you mean by that?

Mr. Davis: Collaborating.

Mr. Walter: I imagine it is to be assumed since the orders were handed down there is a communion of interest.

Mr. Davis: That is what I want.

Mr. Walter: Are you confining your questions now to since the order was instituted in this investigation under the 13 Section, or prior to that?

Mr. Davis: Since the order was entered.

The Witness (continuing): No. Our statute makes it incumbent on the defendant to go into court and defend and that naturally being a community of interests, we did not care to do anything whatever that the shippers or whoever wanted to come in did not want us to do. In substance, the Indiana law requires us to defend this order of the Commission in this 13 Section case. (Tr. 2950.) The provision of the code as I remember it is that the Public Service Commission is authorized and directed to take any and all steps and put in force every order that the Commission may write and is not limited to court procedings as [fol. 1313] I remember it. We dismissed the tariff that was under suspension. (Tr. 2951.) There has not yet been a decision in the Evansville case I referred to. The switching rates in the Indiana portion of the district are the same for single as for 2 line hauls. I could not tell offhand the number of carriers operating in the Indiana portion of the district, but there are not as many switching lines in the Indiana portion as on the Illinois side of the district. The Baltimore & Ohio Chicago Terminal and the Indiana Harbor Belt (Tr. 2952) operate in the Indiana portion. I think those are the only two absolute switch lines although there has been considerable talk about the Elgin, Joilet & Eastern. If that is considered a switch line, it operates in the Indiana portion, at least it has rails there. The carriers named operating in the Indiana portion of the district also operate across the line into the State of Illinois. I presume there is traffic that moves both state and interstate on those lines within the district. I know that from my work with the committee and my study with the cost study committee. (Tr. 2953.)

Redirect examination.

By Mr. Hufsmith:

There were 15 carriers involved in the cost study, (Tr. 2953.) of which the Elgin, Joilet & Eastern, Pennsylvania, Baltimore & Ohio Chicago Terminal and Indiana Harbor Belt, operate in Indiana. There was not submitted a separate cost or a showing of joint costs between Indiana and Illinois and interstate commerce. All the costs were made jointly under all 3 Commissions. (Tr. 2954.) No valuation of the switching facilities lying within Indiana, separate and distinct from the other was submitted at the hearing (Tr. 2954), nor were operating costs applied to that property within Indiana to purely intrastate traffic shown at the hearing.

[fol. 1314] Recross-examination.

By Mr. Davis:

The exceptions either below or above the normal basis of rates on the Indiana side of the district, as I remember, applied on coke, billets, blooms and cement which were higher, but I cannot recall specifically how many were above 2½¢ for single lines and 3¢ for 2 or 3 lines or how many were below those figures. (Tr. 2955.) There was a 40¢ per ton rate there but what it applied to I do not recall nor do I recall any other than the 40¢ rate that was lower; those rates were not involved in this hearing before the Indiana Commission but were before the Interstate Commerce Commission in its general investigation. (Tr. 2956.)

Examination by Examiner Faul:

I haven't any recollection as to the length of haul on the excepted commodities or how it would compare with the average length of haul of commodities moving on the Lowrey basis, but my recollection is that the Indiana single line haul was about half the interstate haul; on the Lowrey basis the short haul was about 1 mile greater on the average than the single line haul in Indiana and I do not believe that we had any short line haul in the state. We have no figures separating the excepted commodities from the Lowrey basis. We could not do anything with them in the case before us so we did not go into details. (Tr. 2956.)

Redirect examination.

By Mr. Hufsmith:

I do not know the longest haul in the Indiana switching movement, or what merely reflected averages.

Cross-examination.

By Mr. Walter:

I cannot remember the exact date to which the cost study extended, but it was in October, 1927 and the testimony was submitted somewhere around 12 months after that date. [fol. 1315] The proposed report was dated about April 28, 1930 and exceptions were filed and the case briefed and argued and then decided by the Interstate Commerce Commission on July 31, 1931. Our decision was slightly later than the decision of the Interstate Commerce Commission but the effective date was the same as the order of the Interstate Commerce Commission. (Tr. 2957.) Based on my experience and the deliberations of the Commission, I see no reason why cost studies might not be conducted for a longer period than a week, say a month, by the railroads and the data submitted to the Commission and the matter decided in much less time than was taken in this case. The time taken in this case should not afford a criterion of what could be done in this case if every effort was made to expedite it. (Tr. 2958.)

W. J. Womer was duly sworn and testified as follows:

Direct examination.

By Mr. Cardy:

Am traffic manager of the Consumers Company and subsidiary corporations and testified in the former proceeding and am speaking for the same industries that I represented in the previous hearing, being the Chicago Stone Producers Association, composed of the Moulding-Brownell Corporation, successor to the Brownell Improvement Corporation; Federal Stone Co.; Superior Stone Co.; Dolese & Shepard Co.; and the Consumers Co.; (Tr. 2959) all of the producers of crushed stone with plants located within the

Chicago Switching District, having rail connections. These quarries are all located on the outer rim of the Chicago District, but more particularly described on the official map of the Chicago District, issued by the standing switching committee as Bellwood, appearing at the intersection of lines A. and 11. McCook, appearing at the intersection of lines C and 17; and Thornton which is immediately below [fol. 1316] Thornton Junction, at the intersection of lines L. and 29. They are all located on the outer rim of the Chicago Switching District and in Illinois. There are no stone quarries located in the State of Indiana in the Chicago Switching District or adjacent thereto. There are no sand or gravel pits located within the Chicago Switching District, either in Illinois or Indiana. (Tr. 2960.) There are stone quarries within the Chicago switching district not served by rail but none in Indiana. Some of the quarries last mentioned have ceased to operate. They were located at Campbell and Grand Avenues, approximately at the intersection of 10 and I; 19th and Lincoln Streets approximately at the intersection of lines 13 and I, and a quarry on Archer Avenue, located at approximately the intersection of lines 14 and J. The rail quarriers in the Chicago district compete with sources of supply located outside the District which ship into Chicago by rail, by water and by truck. Sand and gravel moves from zones 1, 2 and 3 as established in Jones 420 adjustment to Chicago by rail, and stone also. Sand, gravel and stone move from quarries in zone 1, to Chicago by water. (Tr. 2961.) Sand and gravel move from pits in zone 1 by water; crushed stone, sand and gravel move from points beyond zone 3 by water to Chicago and sand and gravel moves from Canada by water to Chicago and by truck from points in zone 1 to Chicago. There is quite a substantial movement of crushed stone from Lemont, Illinois to Chicago and likewise sand and gravel from Lockport to Chicago. In the past year, the movement of stone, sand and gravel into the district by water has increased substantially in the past year or so. Zones 1, 2 and 3 are those established in Jones 420 adjustment which were established and approved by the Interstate Commerce Commission, Docket 17,817; I do not happen to have the reference.

[fol. 1317] Mr. Cardy: That was gone into very carefully before and I do not want to repeat anything that is already

in the record. I assume that the testimony that has been taken in this case before can be used here. That is true, is it not?

Examiner Faul. (Tr. 2963.) Yes.

The Witness (continuing): I have made a survey of all the crushed stone shipments moving between points in the Chicago District for all the companies on whose behalf I am appearing during the year 1926, which year was selected because in this proceeding the carriers in an exhibit used the month of September, 1926 as the basis for a traffic study. During the year 1926, total cars of crushed stone moving rail between points in the Chicago District were 37,137, of which 30,835 moved intrastate in Illinois and 6,302 moved interstate. The percentage of Illinois intrastate being 83.03 per cent of the total and interstate shipments 16.97 per cent of total. There were 11,676 cars single line Illinois intrastate hauls; joint line Illinois intrastate 19,159 cars, which figure includes hauls via 2 or more lines. (Tr. 2964.) I have no separation as between the 2, 3 and 4 line hauls. Single line hauls Illinois Intrastate represent 37.86 per cent of the total Illinois intrastate shipments of crushed stone. Interstate shipments were divided 2,594 single line hauls and 3,708 cars in joint line hauls. The single line interstate represents 41.15 per cent of the total interstate shipments of crushed stone. Consolidating interstate shipments with Illinois intrastate, the cars moving single line were 14,270 and those moving in joint hauls were 22,867. Single line hauls representing 38.42 per cent of the total shipments. As to volume of movement of crushed stone in the Chicago District our own companies have shipped as many as 20 cars from 1 quarry to one retail distributing yard in a given day. (Tr. 2965.) The quantities may vary [fol. 1318] anywhere from 5 cars to 20 on a given day. I do not know of any commodity moving in the Chicago Switching District in greater volume than crushed stone. A typical movement would be from the Consumers Company quarry at McCook to Consumers Company yard No. 191 at Englewood Station on the New York Central. Another from Consumers Company quarry at McCook to yard 130 at Division street station on the Milwaukee railroad. Most of the stone quarries have retail yards located not particularly near the center of Chicago, but scattered generally throughout the Chicago Switching District. (Tr.

2966.) Taking 1926 and 1927 or when we had what might be called a normal movement, there was a steady movement between the quarry and the retail yards from our McCook quarry, ranging from 125 to 150 cars per day. I have made a comparison as to the earnings on stone in the switching district, intrastate as compared with its earnings interstate and with other commodities. (Tr. 2967.)

On single line Illinois intrastate movements previously referred to the average car haul was 13.64 miles on the 11,678 cars moving in 1926. Freight revenues per car were $21.40 and per car mile $1.57, that is per loaded car mile. (Tr. 2968.) On basis of the rate proposed by carriers, the earnings would have been $31.17 per car and $2.29 per car mile. The average joint line haul distance was 21.94 miles. Per car revenue, $27.03 and per car mile revenue $1.23. On the proposed rates, revenues would have been $38.34 per car and $1.75 per loaded car mile. The average distance of single line and joint line hauls, Illinois intrastate is 18.8 miles; per car revenue, $24.90; per loaded car mile, revenue $1.32. (Tr. 2968.) On the proposed basis the charges would have been $35.63 per car and revenue per loaded car mile $1.89. Single line interstate shipments show average haul of 27.18 miles producing car earnings of $26.90 and per car mile earnings of 49 cents. On the proposed basis [fol. 1319] on interstate, average car earnings would be $32.29 and $1.19 per loaded car mile. The single line Illinois intrastate shipments show about one half the average haul on interstate single line shipments. Earnings per loaded car mile on single line Illinois intrastate shipments were $1.57 and on interstate single line they were 99 cents. The proposed interstate single line rates would produce $1.19 per loaded car mile which is less than present per car mile earnings on the intrastate single line shipments.

These computations do not include the 10 per cent increase authorized by exparte 103, which if used would have increased the disparity as against the Illinois intrastate single line shipments. (Tr. 2969.) In arriving at mileages I took the station mileage via route which the shipment moved in each instance. In computing the average mileage via route of shipments, I found the average short line distance was 65.19 per cent of the distance via the actual route of movement.

Taking Vivian's Exhibit 7-A I find that on single line hauls interstate, crushed stone pays an average of $26.17

per car while the average on all commodities is $19.50 (Tr. 2970) per car or $8.88 less than the average revenue on crushed stone. On 2 line hauls interstate, crushed stone paid $9.23 per car more than the average for all commodities and on the Illinois intrastate it paid $5.79 per car more than the average of all commodities on 2 line hauls. Illinois intrastate 3 line hauls crushed stone paid $8.32 per car more than the average for all commodities for similar service as indicated in Exhibit 7-A. Under the proposed basis of rates in case of single line hauls interstate, the difference increased 34 cents per car; one line hauls Illinois intrastate, $1.78 per car, 2 line hauls interstate $3.71 per car; 2 line hauls Illinois intrastate $2.33 per car; 3 line hauls Illinois intrastate $2.79 per car. The exparte 103 increases were [fol. 1320] not considered in this computation. (Tr. 2971.) I made these comparisons on the cars but have not extended it to a car mile basis.

An examination of Exhibit 99 shows on page 2 under group No. 35 classification of clay, gravel, sand and stone with statistics covering 2,068 cars moving during the month of September, 1926. Comparing the figure of cars with the 11,676 cars of crushed stone moving Illinois intrastate in single line hauls described on page 2 of the exhibit, it shows so far as crushed stone is concerned that it is an understatement per car in the weight factor of 6.07 tons per car. The 11,676 cars of crushed stone presents a better cross section of the results of its transportation by the carriers concerned than the result indicated on Exhibit 99 (Tr. 2972), which includes other commodities falling in the crushed stone classification. It is fairer to show one year's shipments of crushed stone in talking about it rather than one month's shipment of numerous commodities falling into the same classification. (Tr. 2973.) On the basis just mentioned, Exhibit 99 understates per car revenue on crushed stone by $6.64. It shows $14.76 as average per car earnings on classification No. 35, average per car revenue at the bottom of the page shows $11.18 on all commodities while on one year's shipments of crushed stone moving single line, Illinois intrastate, the average per car revenue is $21.40. Translating that to the proposed basis, the figures shown in column 15 opposite classification 35, of $22.98, or compared with an average on all commodities of $15.27, and an average on crushed stone of $31.17, which results

in an understatement against crushed stone of $8.19 excluding, of course, the exparte 103 increases. There are corresponding discrepancies in the averages per ton, both on the present and the proposed revenues. Crushed stone moves in open top equipment. (Tr. 2973.) I do not know of [fol. 1321] any transportation reason why crushed stone should pay a higher revenue per car than other commodities moving in the district and my opinion is that it should pay less than the average. In 1926, there were 37,137 cars of crushed stone moving between points within the district, and by comparison, the movement today is practically nil. I have made a study of this particular proposition.

Exhibit 101, page 2, under classification 35, one line haul, Illinois intrastate shows 30 cars of clay, gravel, sand and stone on which earnings per car on the present basis indicated in column 8 are $22.33 and proposed $33.65. (Tr. 2974.) At the bottom of columns 8 and 9 are shown average per car revenue all commodities of $12.88 and $24.73 respectively. Crushed stone earnings previously mentioned for the year 1926 which would be comparable are $21.40 under the present basis and $31.17 under the proposed basis. The average shown under classification 35 would represent an understatement on crushed stone of $9.45 per car on the present basis of rates and $8.92 per car on the proposed basis, excluding exparte 103 increases.

As to Exhibit 103, on page 12, covering Illinois intrastate 2 line movement, the situation is substantially the same as I have just indicated, except the understatement would amount to $11.83 per car on crushed stone at present rates and $16.02 on the proposed basis. On page 22 the situation is the same except the difference would be $2.98 present basis and $10.58 on proposed basis. The figure $2.98, reached by averaging 2 line and 3 line hauls for the year 1926. I did not have the exact proportion moving 2 lines or the exact proportion moving 3 lines. The figures just given are in connection with the test period from November 9 to 15th, 1931. (Tr. 2975.) I have made the same comparisons as to Exhibits 103 for the test period from [fol. 1322] January 11 to 17th, 1932, excluding exparte 103 increase. That exhibit at page 2 shows the situation substantially the same respecting understatements as I have previously stated in connection with Exhibit 101. The understatement against crushed stone being $9.37 and

$11.83 per car respectively on the present and proposed basis. Page 12, Illinois intrastate, 2 line hauls the difference against crushed stone is $7.10 and $10.03 per car respectively. My investigation to determine the shipments of crushed stone made by rail within the Chicago Switching District during the test period covered by Exhibit 101, shows there were 101 cars during the November period shipped between intrastate points in Illinois and 18 cars between interstate points. Applying those figures to Exhibit 105 in the Illinois intrastate diagram shown at the last of the page, I find the situation on crushed stone differs from that portrayed on all commodities, that is, by the average shown. (Tr. 2976.) Taking commodity classification, 35, Exhibits 101 and 103 show 106 cars shipped during the November test period, while 101 cars of crushed stone were shipped during the January period; classification 35 indicates 25 cars shipped and there were 25 cars of crushed stone shipped. There was a decrease in Illinois intrastate shipments of 75 per cent in volume of cars comparing the 2 periods selected by the carriers and covered by their exhibits 101 and 103, that is, November 9 to 15, 1931 as compared with January 11 to 17, 1932. Further analysis of these figures as between 1, 2 and 3 line hauls intrastate Illinois shows in all instances the crushed stone movement has been less, materially less during the January test period than during the November test period. The difference or the declines in the January test period being as much as 100 per cent under the November test period, which shows [fol. 1323] conclusively that insofar as crushed stone is concerned, there was no blockading of interstate commerce (Tr. 2977), and there was no tonnage or revenue loss to interstate commerce that was gained by Illinois intrastate commerce. Further investigation shows that during the November test period 20,872 tons or approximately 400 cars were trucked direct from the various quarries and during the same period 19 cars moved by rail Illinois intrastate and 27 in interstate movement. The tonnage trucked in the January test period was 4,356 tons. In other words, in the November period 400 carloads of stone were trucked to 119 shipped, and in the January test period approximately 80 car loads were trucked to 27 cars shipped. The stone trucked in the district moves to the plants of building material dealers who handle crushed stone, to contractor set-

ups to be used in connection with concrete work, to steel mills for fluxing purposes, to railroads for use in ballast work and to paving setups. (Tr. 2978.)

The only two building construction jobs of any consequence now running in the Chicago district are being supplied wholly by truck; those are the new post office building and the Field Estate Building. The Field Estate building at LaSalle and Adams Streets, and the post office building is on air rights over the Union station tracks extending from Harrison Street to Van Buren Street and from Canal Street to the parcel post building. Approximately 50,000 tons of stones will be used in that job which is now running but far from completed, which would mean approximately 1,000 cars. (Tr. 2979.) The Field Estate building is divided into 3 units, 1 of which is being built at the present time, which will require approximately 25,000 tons for the 1 unit, of the remaining units 1 will use substantially more than the present one because it will be constructed as a tower, the center section. In the past year or so there was a grade separation project near 16th St. and Canal St., [fol. 1324] where the mineral aggregates were delivered by truck. This separated the grade of several railroads and a public street, and there has been considerable improvement work on the lake front in Grant Park and in the territory of the 1933 World's Fair.

Virtually no stone was trucked from the quarries 2 or 3 years ago because they were without facilities to efficiently or economically load trucks. (Tr. 2980.) But competition has forced quarries on the outer rim of the district to install facilities for truck loading and to utilize truck transportation. Insofar as I control the movements of shipments, I say possibly the carriers will lose revenue because the movement will change from rail to water or to truck movement or both, and I assume other stone interests on whose behalf I appear are considering plans just as my interests are to meet that situation in substantially the same manner in which we propose to meet it. (Tr. 2981.)

That is not intended as a threat. We have plans under way and have spent a lot of time making investigations to determine just what we could do. We find we can truck cheaper than we can ship on the present Illinois intrastate rates. The exparte 103 increases, increased our burden by exactly 10 per cent and that increase diverted traffic to the

trucks. I have no figures on truck movement prior to exparte 103 increases for comparable periods, but I can say from my general observation covering the period of the last 4 years the volume of crushed stone moving by trucks between points in the Chicago District have increased. After the exparte 103 increase became effective during the January test period, we shipped 25 cars intrastate by rail and 2 cars interstate or a total of 27; that is the total state and interstate. 27 cars were shipped by rail during the [fol. 1325] January test period divided 25 state and 2 interstate. 119 cars were shipped by railroad during the November period divided 101 state and 18 interstate; and the tonnage hauled by truck was 20,872 tons in the November period and 4,356 in the January period, which was immediately subsequent to the exparte 103 increases. The ratio of trucking in Jaunary was less than in November because the consumption is different (Tr. 2983), the production and consumption of crushed stone are not constant throughout the year. The quarries shut down during January and the trucking is stone taken from stock pile. The study based upon January and November submitted by carriers would not fairly reflect the conditions surrounding the movement of crushed stone in the district and that is what prompted me to select the entire year of 1926 to see exactly the situation as to crushed stone, which is a seasonable movement. (Tr. 2984.) Based upon my knowledge of transportation conditions and the sale and distribution of stone in the Chicago district, I do not see how the present intrastate rates have or could have any effect whatever upon the movement of stone or gravel interstate in the Chicago district (Tr. 2984), because stone has to move between 2 points, being shipped wherever required and if to an interstate destination it will move interstate and if the destination is in Illinois, it will move intrastate. We cannot shift destinations around. With two routes available between 2 points, one being interstate and the other intrastate, I would select the one over which the lowest rate applies, Mr. Examiner, if there were 2 open routes with different rates. Competition forces us to do that if we want to stay in the business. (Tr. 2985.)

I would select the cheaper route irrespective of competition, if I had the opportunity; I would do it every time. (Tr. 2985.) There are no stone quarries in the Indiana

[fol. 1326] portion of the Chicago switching district, and no crushed stone moves from Indiana into Illinois; and outside of an isolated movement where it might formerly move interstate, which under the present adjustment moves state, is the only instance I conceive of where it might affect an interstate movement, which in my judgment would not result to the prejudice of any interstate shipper or purchaser of stone in the Chicago switching district, because the quarries that ship the stone are all located in Illinois. It is a case of the Illinois quarries competing with Illinois quarries. It is not a case of an Illinois quarry competing with a quarry in Indiana. As receivers in Indiana all pay the same rates, and I do not know of any competition between a receiver in Illinois as contrasted with one in Indiana. (Tr. 2986.)

Cross-examination.

By Mr. Davis:

As between a receiver of stone in Illinois, moving intrastate, and one in Indiana moving interstate, each with a single-line haul, the Illinois intrastate rate will be 2½ cents, increased by 10 per cent under Ex Parte 103, making it 2¾ cents, while the Indiana single-line interstate rate would be 3 cents, or ¼ of a cent more than the Illinois intrastate rate. (Tr. 2987.) If the situation such as you suggest exists with the Ex Parte 103 advances, expiring in March, 1933, the Illinois intrastate rate would be 2½ cents and the interstate rate 3 cents. But there are things physically possible that are practically impossible, and I do not know of a situation where there is a receiver or user of stone located close enough to the two lines to have that situation result in any material difference, because in the case of the interstate receiver he could move his shipments by truck from [fol. 1327] the quarries, while the intrastate shipper would have the advantage of rail service and truck service. If the interstate receiver wanted to profit by the difference between state and interstate rates, he would specify truck service. But as far as rail service is concerned, the difference would be a half cent, as far as single-line haul is concerned, ignoring the advances under Ex Parte 103, as between interstate and intrastate single-line movement. (Tr. 2988.) We ship both to state and to interstate receivers of

stone. On a two-line haul in a state movement we would pay 2½ cents per hundred, and on the interstate 3½ cents. But the competitive commercial situation today results in selling f.o.b. destination, and the producer, by reason of competition, is forced to absorb any difference. The receiver or user does not suffer by the difference between interstate and intrastate rates. There is no production in the Indiana district of crushed stone (Tr. 2989); but crushed stone is transported by water to Indiana and delivered thence by truck, and that is competition with the interstate stone shipper whose plant is located in Illinois, and competition he has to meet. We have our yards strategically located throughout the district, according to our best judgment and requirements of the business, and this crushed stone is shipped to those yards, sometimes by car and sometimes by truck. We locate the yards wherever our business judgment dictates. In the last two or three years we have located one, but following the slump in business decided not to go ahead until conditions warranted making the expenditure for keeping the yard. (Tr. 2990.) In the latter part of 1929, by consolidation, we acquired a number of properties in the territory in which the Consumers Company did not have yards, and through subsidiary companies we now have a much broader distribution of yards than prior to the time we acquired the subsidiary [fol. 1328] companies. Some of these new yards are located in the Calumet district, but we do not ship to these by rail and then truck across the state line, and are not contemplating it because we can truck direct from our Illinois properties to the Indiana yards. (Tr. 2991.) We handle stone from our Illinois properties to the Indiana yards both by rail and by truck. The yard of these subsidiary companies are located, some in Illinois and some in Indiana, and we have yards in Wisconsin as well as producing properties. For a job on the Illinois side we probably would truck direct from the quarry, as against shipping to the yard, unloading, stocking, and thence trucking from yard to the job. Our only reason for shipping into our Indiana yards by rail is for stock purposes, where it would be uneconomical to send a big truck hauling a small volume. (Tr. 2992.) We ship both by rail and truck to the yards on the Indiana side of the line. (Tr. 2993.)

Page 2 of Exhibit 101 shows our commodity falling in group 35, and one reason I gave justifying a crushed stone

rate less than prescribed in Docket 19610 is the fact that we pay more per car than the average shown on that page, showing we pay $22.33 while the average is $12.88. (Tr. 2993.) Column 8 shows there are 3 items paying less than $12.88. All other shippers listed except those three could not necessarily use the reason I gave to have their rates either left as they are or reduced. I am concerned with crushed stone and am trying to limit my testimony to crushed stone, but I can easily distinguish between crushed stone values and the values of those other commodities moving on lower rates than crushed stone, or which yield per-car earnings lower than the crushed stone. The companies I represent here are the only shippers of the commodities represented by me whose plants, producing plants, [fol. 1329] are located within the Chicago switching district. (Tr. 2994.) There could not be a shipment made in the Chicago switching district unless it was made by one of the companies represented by me. We have competitors, however, located outside the Chicago switching district, but the ones I represent are all of the producers of crushed stone in the Chicago switching district. You could buy a car of stone from us, have it delivered at a certain spot, and then you could ship it somewhere else. (Tr. 2995.) As to the shipments I refer to, where the revenues were understated, there could not have been other shipments than those I represent that originated within the Chicago switching district, because the figures I gave I obtained at the source. It is possible someone might have taken a carload of crushed stone, produced at Joliet, and shipped it to Chicago to a given consignee, and that consignee may have reconsigned it to somebody else at Chicago. We have never shipped crushed stone for teamtrack delivery. Neither the proposed rates nor the present rates apply between industries and teamtracks or between teamtracks, and for teamtrack shipments we would have nothing but a combination of local rate factors. (Tr. 2996.)

Two of the quarries not located on rails are still operating, but in a small way. One has ceased operations. Our competitors located outside of the district are located in Zones 1, 2 and 3 in Jones 420 adjustment, and also at Sturgeon Bay, Wisconsin; Sarnia, Ontario Province, Canada; Ferrysburg and St. Joseph, Michigan, and certain points on

Lake Superior. The rates from Zone 1 are 65 cents per net ton single-line hauls; 70 cents from Zone 2, and 75 cents from Zone 3. The distances in Zone 1 are for 50 miles and under; 51 to 100 miles in Zone 2, and 101 to 150 miles in Zone 3. Those rates apply within the switching district [fol. 1330] on the initial line, and for connecting line delivery the rates are uniformly 20 cents per ton higher. There are some few exceptions to that, such as the rate from Joliet and Elmhurst, Illinois, to Chicago. Those rates, generally speaking, are 55 cents per net ton for single-line or joint line hauls (Tr. 2998), which were established by the Illinois Commerce Commission as a temporary adjustment pending the outsome of these proceedings. That statement is in the order of the Illinois Commerce Commission. Several cargoes of both crushed stone, sand and gravel have been shipped by water to the East Chicago dock terminal at East Chicago in the years 1930 and 1931. Several shiploads were unloaded in 1931, but I cannot give the exact number. I think there were probably three of crushed stone, and I do not know how many in 1930. (Tr. 2999.) There is no interstate movement from those dockets in Illinois by railroad, and I do not know of an interstate truck movement, but do know there has been intrastate movement by truck; I mean to Indiana destinations. The average load on Illinois intrastate one-line hauls of crushed stone was 51.94 net tons; Illinois intrastate joint hauls, 54.42; interstate single-line hauls 53.81; and interstate joint line hauls 53.12. As to the other commodities used, I do not have the detail of the average loadings, but will say that the average load was less than on crushed stone. As nearly as I recall, the average load of the other commodities is approximately 39 tons per car. (Tr. 3000.) In the case of the other commodities I used the weighs shown in Exhibit 7-A in this proceeding. If I had a copy of that exhibit before me I could tell you the figure I used. The average distances are merely the distances from station to station, as contained in the mileage totals of the various carriers, and I describe them as average car haul distances. It is not a weighed average. We [fol. 1331] operate some of the trucks in handling crushed stone. (Tr. 3001.) They are of varying sizes from a Ford to a 5-ton Mack truck with sideboards. We could probably put half a yard or may be 1500 pounds of crushed stone in a Ford truck. We are permitted to load 15,000 pounds in

cities on a 5 ton Mack truck. In some instances the weight factor, by state law, is limited to 36,000 pounds gross, and the truck weighs around 5,000 pounds (Tr. 3002), and the maximum load we can haul within the city is equivalent to 7½ tons, but the truck has a carrying capacity of approximately 15 tons, but we have to keep within the law in regard to the weight on these trucks.

Cross-examination.

By Mr. Behrle:

In this last question I used the word "we" as meaning the Consumers Company. In speaking of shipments to Indiana I did not mean that the Consumers Company trucks to Indiana. In that instance I was speaking for those in whose behalf I appear here. The Consumers Company has trucked from McCook to South Chicago and Hammond. Ordinarily such commodities would be trucked from Thornton (Tr. 3003), which is the nearest quarry. There is no understanding between the various shippers that certain territory inside of Chicago shall be served by certain companies. We could not make as low a price on stone trucked from McCook to South Chicago or Blue Island or Harvey as a quarry located much closer and having lower trucking costs. A number of factors determine whether we ship by truck or by rail, but competition is the principal one. Competition determines it, because we would not expect to get business for a truck haul from McCook to Harvey in competition with a quarry located at Thornton, a mile distant from Harvey. Since testifying in this case in 1928 our [fol. 1332] truck hauls have increased in distance (Tr. 3004), and distance is one of the factors we consider in determining whether to make a truck shipment or a rail shipment, but as we increase truck hauls the average rail haul will not be longer. Increased trucking hauls would not increase average rail haul, because the rail haul and the crushed stone business is limited to a very short radius now. Pits located in the territory limit very materially the territory into which we can profitably ship by rail. I wish the rates were all the same now, speaking of Joliet. But in the switching district the rates may be different from one quarry than from another (Tr. 3005) quarry, because of a one-line haul from one or a two-line haul from another, or

a two- or three-line haul from another one. Take a quarry located on the Indiana Harbor Belt at McCook, Illinois, shipping to Blue Island, on that line would be a one-line haul; but from McCook to Thornton, served by the Baltimore & Ohio Chicago Terminal and other lines, but not on the Indiana Harbor Belt, a two-line movement would be necessary to reach Blue Island on the Indiana Harbor Belt. Since the hearing in 1928 the Consumers Company has acquired the quarry of the Peoples Crushed Stone Company. (Tr. 3006). We operate the Peoples Company and operate the quarry when business justifies it, but it is not operating now. We acquired it approximately a year ago. (Tr. 3007.)

Redirect examination.

By Mr. Cardy:

My position in the former hearing was to this effect, that crushed stone, sand and gravel should take the same basis as every other commodity, but I also proposed a per-car scale of charges to be applied as an all-commodity basis. The per-car scale is reproduced by the Commission in its decision and commented upon. In this proceeding I take the position that we not favor an all-commodity basis; [fol. 1333] that the present rates intrastate in Illinois, as well as the interstate, are entirely too high and are more than crushed stone as a class of traffic will bear, and are forcing us to other forms of transportation. (Tr. 3010.) My judgment is that the present basis that the carriers propose in this proceeding casts an undue burden on stone as compared with other commodities. In making rates for distances of 20, 30 or 40 miles on different commodities, the value of the commodity, the weight which it loads, and various other factors are given consideration; and it is my position, in applying a rate in cents per hundred pounds on stone that likewise applies on higher-grade commodities, results in excessively high rates on stone, taking into consideration the low grade of the commodity. (Tr. 3011.)

Cross-examination.

By Mr. Walter:

Since the 1928 hearings a number of highways have been paved, some have been widened, and new arteries have been

opened up over which trucks can operate. The competition between trucks for business has become keener than it was, and the trucks are more numerous. The carriers have made efforts to established rail rates that will keep the business outside of the Chicago switching district but not within the Chicago switching district. (Tr. 3012.)

Recross-examination.

By Mr. Davis:

The carriers are trying to get 3, 3½ and 4 cents in the district, but that is not going to help the railroads get a movement of crushed stone. That is going to help drive it away quicker than any one thing I know of. (Tr. 3013.) My answer regarding competition was intended to convey this thought, that the producers of crushed stone whose [fol. 1334] quarries are located within the Chicago district have no producer competitors with properties where they produce crushed stone located in the Chicago district, but that their competitors producing crushed stone have properties outside the district from which they ship into the district. I represent the Consumers Company, the Dolese & Shepard Company, and there is the Chicago Stone Producers Association. That is not another producing concern. It is an organization composed of various producers of crushed stone whose quarries are located within the Chicago district, of which the Consumers Company is a member. (Tr. 3014.) Dolese & Shepard, and others, are members. There is the keenest competition between the Consumers Company and the Dolese & Shepard Company; and there is competition in the district between the quarries located within the Chicago district that ship from the quarries such as Thornton, McCook and Bellwood, but I understand your question to be to this effect: Is there any producer of crushed stone other than the members of the Chicago Crushed Stone Producers Association, with producing plants located in the Chicago district? (Tr. 3015.) The Consumers Company is separate from the Dolese & Shepard Company. There is no relationship between these two except a competitive relationship, and the Chicago Stone Producers Association is one composed of such concerns as Consumers Company and Dolese & Shepard Company. Other members of the Chicago Stone Producers

Association are Molding-Brownell Corporation, with Federal Stone Company and Superior Stone Company as subsidiaries; the Peoples Crushed Stone Company is a subsidiary of Consumers, so the 6 or 7 members of the Chicago Crushed Stone Producers Association at the time of the former hearing have dwindled to 3, but the 3 represent the same quarries that the 6 or 7 previously represented (Tr. 3016); and there is keen competition between the individual members of the Chicago Stone Producers [fol. 1335] Association within the district, very, very keen. My answers regarding competition were as to crushed stone against crushed stone, and were not confined to sand versus crushed stone, gravel versus crushed stone, or some other commodity versus crushed stone. There is competition between crushed stone such as we have talked about, and crushed slag, which is produced both in the Illinois and the Indiana parts of the district, and the Consumers Company comes into competition with the producers of crushed slag in (Tr. 3017) Indiana as well as in Illinois in all instances where crushed slag can be used as a substitute for crushed stone, which in all instances cannot be done. My answer would be the same in regard to the Dolese & Shepard Company and the other companies comprising the membership of the Chicago Stone Producers Association, with their affiliated companies.

I said that the crushed stone used in the separation of the grades at 16th Street and Canal Street was trucked there. I am very sure this crushed stone used in that construction was not shipped from Thornton over the Baltimore & Ohio Chicago Terminal. That stone was hauled by truck from the McCook quarry of the Dolese & Shepard Company. (Tr. 3018.) The president of that company is in the room and he would undoubtedly be in a better position to answer that question than I am. All producers of stone in the district ship by rail into Indiana, will pay the interstate rate, and each will pay the same if they ship via the same railroad route; and if they ship into Illinois they will pay the intrastate rates and each will pay the same if they ship via the same rail route. (Tr. 3019.)

Trucks are not used in transporting crushed slag to anywhere near the same extent that trucks are used in transporting crushed stone because the conditions are entirely different. (Tr. 3020.)

[fol. 1336] J. L. ROBERTS was duly sworn and testified as follows:

Direct examination.

By Mr. Walter:

Am traffic manager of the Barrett Company and at the former hearing, stated my qualifications.

Mr. Walter: I take it is not necessary to restate them.

Mr. Davis: No.

Examiner Faul: There being no objection, it will be so considered.

Yesterday in glancing over the record in the original case I was particularly interested in the opening statement of Mr. Galligan and believe the Jones & Loughlin case was overemphasized and it is my purpose to emphasize our situation. At our plant at the South fork of the Chicago river, we produce paving tar, principally; roof tar and creosote oil, as stated in my previous testimony. These articles are produced from crude tar which we obtained from Interlake Iron Corporation and Wisconsin Steel Co., and for a number of years, we transported this crude tar to our plant by tank barge. (Tr. 3022.) Our reasons for changing to rail are set out in my previous testimony but we will go back to transportation of the material by barge if the proposed rates become effective. At the original hearing, I understood our rate was to be increased from 2½¢ to 3½¢. I now understand the increase will be to 4¢, making it doubly sure we will not be imposed upon to the extent carriers are making — an effort to saddle us with unreasonable rates. My opinion is that the rates found reasonable by the Interstate Commerce Commission on interstate traffic in the Chicago District are unreasonable. At the prior hearing, a representative of the Illinois Central appeared and expressed a willingness to continue the rate on our commodity and I had assurance of the lines involved or [fol. 1337] parties to the rate that they wanted to continue the rate. My understanding is at the opening of this hearing they withdrew that. My statement is no threat (Tr. 3023); it is simply a matter of the economic condition, that is all. Our price is down to the 1914 level and we cannot pay freight rates that are 100 per cent of the 1914 level.

Every penny with us counts today. We can handle this commodity by barge at a rate less than the 2½¢ present rate. The only reason we gave the business to the Illinois Western was because it asked us to do that and we were helping out the railroads but we do not want to be penalized for doing it.

Examination by Examiner Faul:

Tar moves in tank cars, and the Commission cited our particular situation, told us we better come and ask for an allowance for tank car movement and I referred the matter to our traffic analyst and our attorneys to make up a case. The carriers have not done anything to meet the suggestion of the Commission that they compensate us for the use of the private cars independent of the rate. (Tr. 3024.)

Cross-examination.

By Mr. Davis:

We receive this commodity crude coke tar; we do not ship it. It is a product of the By-product Coke Ovens obtained in destructive distillation of coal for coke. It is our raw material just like iron ore (Tr. 3025) is raw material for pig iron and like any other raw material. We are particularly interested in the rate on this crude coke tar but generally we are interested in the whole situation. This crude coke tar originates at coke ovens in Illinois and there are two plants in Indiana at Indiana Harbor (Tr. 3026), which I think is within the Chicago District. There is a very in-[fol. 1338] significant movement from Indiana Harbor and we do not get it from there. I do not know particularly about the movement or whether it ceased, although I know there is a small movement from Indiana Harbor into the Chicago district and it has to move all rail on the interstate rates. (Tr. 3027.) The majority of our crude coke tar comes from coke ovens from Illinois within the district on which we would pay the rail rate intrastate. (Tr. 3027.) Of course all the concerns in the business are located within the Chicago District; they have plants within the Chicago District and they get tar from points within the Chicago District intrastate; we also get tar from points in Michigan as far as Detroit from points

down in Illinois and points down in Indiana. We have both movements, a switching movement and the other movements. We use crude coke tar principally to make paving tar. There are two other concerns in the Chicago District dealing in paving tar (Tr. 3028), but I do not know the locations of their plants. One is located on the Chicago & Illinois Western which gets its tar from the Peoples Gas Light & Coke Co., right next door to it. I cannot give the location of the other plant, it is somewhere in the Chicago District but do know it gets most of its tar from Blue Island, Illinois—that is, Chicago District tar. We have around 2,000 tank cars which we own. (Tr. 3029.)

Redirect examination.

By Mr. Walter:

We get all of our crude coke tar from Illinois points of origin as far as the district is concerned. (Tr. 3029-3030.) The movement from Indiana is a negligible one. I did not say that we got some from Indiana. I said I understood there was a small movement from Indiana; that there were 2 concerns located in the Chicago District besides ourselves and there was a small movement to one of them, but we [fol. 1339] get nothing from Indiana in the Chicago Switching District. We get some from outside on a line haul. (Tr. 3030.)

Mr. Walter: Your Honors Please, there are 2 matters I would like to take up before we put another witness on. I gave Mr. Davis an extract from the testimony of President Rogers of the Elgin, Joliet & Eastern Railway which gives the mileage of that road and the industry tracks that are on it. Is it satisfactory for me to read those figures into the record, Mr. Davis?

Mr. Davis: Yes.

Mr. Walter: The main line of the Elgin, Joliet & Eastern is 211 miles, that is, main line and branches. In addition, there are something over 400 miles of industry track owned by that line. Is that a fair statement?

Mr. Davis: That is according to the statement. (Tr. 3031.)

Mr. Walter: In addition to that, I requested respondents to furnish a statement of industry tracks owned by respondents with cost of maintenance and if rented to an industry,

the terms of rental, in order to have in this record a statement that will answer the inquiry that was unanswered before as to the extent of the industry track ownership by the carriers and the industries. (Tr. 3031.)

I know it is difficult for carriers to give us that data but in one of the Commission's investigations, a question was sent them asking for the information and I am under the impression that the carriers, having gathered that information for the Commission, could furnish it to us in this case so far as the Chicago Switching District is concerned.

Mr. Davis: I assume there is now a part of this record, Mr. Walter's letter to Commissioner Lee, dated April 14, 1932, entitled in both dockets, 19610 and 24950, in which he [fol. 1340] makes request for certain information regarding industry tracks and my reply to him is to a similar letter from Mr. Walter, under date of February 26, 1932.

I assume the record also contains the letter from Commissioner Lee to myself under date of April 25, in which he called my attention to Mr. Walter's letter of April 14, (Tr. 3032.) and Commissioner Lee suggested "under the circumstances, I will be glad to have your advice promptly whether the carriers will make available this information (ownership of industry tracks. Abstractor.) which apparently has been compiled in connection with exparte 104, part 3." (Tr. 3033.) I replied to Commissioner Lee's letter and, among other things, said that his letter seemed to have modified the request as to furnishing this information by limiting it to the returns made in exparte 104, with the suggestion that we would do everything to hasten the cause to a final conclusion but we did not want to be required to furnish information to Mr. Walter that would cause us to expend considerable sums of money in preparing something we did not intend to offer ourselves or feel was germane to the issues. (Tr. 3034-3035.)

The side tracks that are owned by the railroads and referred to in return made in expare 104, part 3, only cover those side tracks that were put in by the railroads, but not in strict compliance with orders of the Director General. I have shown Mr. Walter the return of the Milwaukee here; he has not had time to study it in detail but I am certain that he will answer me that this will not give him the information or anything like the information that he wants.

Mr. Walter: There is another factor to that also, if the

Examiners please. The carriers decline to give us access to the working sheets. Unless we can go back to the work- [fol. 1341] ing sheets of the cost study to the time of the engine at the particular industry along with the separation of ownership, which would not do us any good.

Mr. Davis has declined to do that and unless we can have access to that so that we can apply time against ownership, it would not do us a bit of good to have the data and what he has, there, would not do me any good anyhow.

Mr. Davis: I want to show this to the examiners, so they can follow it although they probably are familiar with it anyhow. (Tr. 3036.)

Insofar as the returns in exparte 104, part 3, is concerned, if Mr. Walter so desires, the carriers can furnish him the return insofar as it relates to industries within the Chicago District.

Mr. Walter: That does not give me any of the information requested so that we could separate as between industry tracks owned by the railroads and those owned by the industries and the cost of the ownership, etc. (Tr. 3037.) I have no way of getting that information and in addition, if I had, it would do me no good unless carriers would make available the working papers in the cost study which were available to Mr. Oliver. They have declined to do that and I now ask that they be requested to do it, to make them available so that we can make that study just as available.

Examiner Faul: Mr. Walter, in Commissioner Lee's reply of April 25, to your letter of April 14, he stated among other things that because of the action taken by the Commission on your several prior petitions for reconsideration and further hearing of this case, and on your motion to require further and more detailed cost study, he was [fol. 1342] not inclined to make request to the carriers that would require them to give access to their working papers (Tr. 3037), and especially because the shippers had had ample opportunity prior to former hearings as he understood it to obtain from carriers records and working data desired. In view of the attitude taken by the Commissioner in his letter of April 25, the examiners will, of course, take the same attitude at this time and will not ask the carriers to furnish the information referred to.

Mr. Walter: We respectfully except to that ruling and insist that the data is material and that we are entitled in this case to see the data for investigation and preparation of data particularly bearing on the issues in this case which are different from what they were in the original case.

Examiner Faul: The hearing will stand adjournment until Monday morning, May 9th, at 9:30 o'clock A. M. (Tr. 3038-3039).

Hearing reconvened at Chicago, Illinois, May 9, 1932.

J. E. PIERCE was duly sworn and testified as follows:

Direct examination.

By Mr. Cardy:

Am traffic representative of the South Chicago Coal & Dock Co., operating docks and yards located on the South branch of the River at 92nd St., right there at the harbor. It handles bituminous coal coming from Eastern bituminous fields down through the Great Lakes and over the South Chicago docks as well as all rail movements from these Eastern facilities. (Tr. 3040.) The Company has large storage facilities at South Chicago and we have two distributing yards at the present time in Chicago but are not shipping to these yards from the docks; we ship all rail [fol. 1343] into these yards. I have a map marked Exhibit 119 showing where coal moves in the Chicago district and how it is distributed and points to which it is distributed in the district. Said exhibit received in evidence, marked "Exhibit 119, Witness Pierce." The tonnages shown in red on the exhibit are distributed at the points shown with the dot. We have not indicated the industry or the consumer and have not shown any tonnage for our 2 distributing yards. (Tr. 3041.) We distribute the coal so shown at these various points either all rail generally or by truck from our dock at South Chicago under the present conditions. The coal to the 2 yards moved all rail and practically every tonnage shown excepting one on the immediate South side of 50,000 tons were shipped direct all rail but the 50,000 tons, I guess practically all moved by truck. The all

rail shipments referred to were shipment all rail from the Eastern fields that did not come over our docks at all. (Tr. 3042.) Today there is no movement all rail from our South Chicago plant to the points of destination shown in the Chicago District. We would like to ship all rail from the South Chicago dock to all points on the map. Our company attempted so to do about 2½ years ago, but after trying 30 cars, were forced to stop on account of the high switching cost. (Tr. 3042.) Our company is going ahead to increase its dock facilities and it is our intention to bring more coal over these docks. They have a heavy investment and these docks have to be used. There has been a big increase in the movement of this coal over the dock. It has not been a tonnage that will make the docks pay. In addition to the tonnage shown on the map, we distribute by truck about 150,000 tons per year to small consumers such as hospitals, hotels and various institutions; switching rate [fol. 1344] situation has forced us to the retail business; and that has provided practically all our coal tonnage over the dock, but that business as our company views it could never be made to produce a volume big enough to make the docks pay on their investment. In order to establish reasonable rates (Tr. 3043) we have in mind filing an intrastate complaint seeking rates on which we can move this coal within the Chicago District. Outside of the 30 cars, we attempted to move, about 3 years ago, there has been absolutely no coal from the South Chicago docks to points in the Chicago District all rail. There is no dock which might be termed a point of production for coal in the Chicago District that I know of at the present time. There would be no coal outside of what originates at our dock that originates in the district and moves to a point in the district that I know of.

Cross-examination.

By Mr. Walter:

I do not think the carriers have shown any disposition to establish rates that would move this traffic in competition with trucks. I think they were approached as to that before I came with this company. So far as I know, no movement has been made that would give rates that would move the coal.

Examination by Examiner Faul:

The rates by truck run from 30¢ up as high as $1.00 per ton, which includes delivery right to the consumer's plant. There is an unloading cost for the plant there which really takes the place of the switch movement, as well as local delivery after unloading. I could not give the maximum haul because we do some trucking up to the Northwest side of Chicago at the present time to some small consumers and I understand that is where the $1.00 rate applies and I could only estimate the distance. (Tr. 3045.) There was no change in the all rail rate some 2 years ago when [fol. 1345] we discontinued using all rail service. That was more in the way of an experiment. We opened a yard on the West side and attempted to move coal over the dock to the yard and sell it, but after moving 30 cars, they found it could not be done. The all rail rate from our mines is $3.09 per ton, which applies to anywhere within the switching district.

Cross-examination.

By Mr. Davis:

Eliminating handling charge over the docks, our rail and lake rate to the docks is $2.34. We do not truck from the South Chicago dock to the points shown in red on Exhibit 119, that is, not to all of them. We truck to the one shown immediately on the South side next to the Illinois Central, at the University of Chicago, which covers the 50,000 tons. (Tr. 3046.) That is, the only individual large tonnage, but as I explained, we truck about 150,000 tons a year direct to smaller institutions. The movement shown at Riverdale and the one near Burr Oak, are also all rail. The latter, about 20,000 tons. All others except to the University of Chicago are all rail. An all rail shipment to the University of Chicago would have to be switched to the Illinois Central. I am not sure whether the Short Line would have a direct interchange with the Illinois Central. If they have, it would be a two line haul, if not, a three line. (Tr. 3047.) I think there is a track from the Illinois Central on which the University of Chicago could unload coal in the vicinity of the University; I do not know whether there is rail connection to the University

of Chicago or not, but believe there is an Illinois Central team track within just a short distance of that point, located, I think around 53rd or 54th St. I do not know whether the University of Chicago has its own siding or not; it may have. I haven't figures showing division, but [fol. 1346] I do not think coal handled over our docks is mostly for bunker fuel. I did not testify on behalf of our company against the railroads involving rates on coal to Rockford. (Tr. 3048.)

Redirect examination.

By Mr. Cardy:

Galligan's I. C. C., 197, being directory of industries in the Chicago District, located on railroads indicates that the University of Chicago has a team track on the Illinois Central, or a private siding. I have no personal knowledge about it but this shows the heating plant of the University located at 61st & Blackstone Ave., Chicago, on the Illinois Central indicating that the plant we deliver to must have an industry on the Illinois Central. (Tr. 3049.)

Mr. Cardy: The evidence in the complaint case, insofar as it is relevant in this case will be stipulated into this record. Is that correct?

Mr. Davis: Yes, that was the agreement, but I want to call attention to this fact: In the complaint case, there is nothing but Section 1 involved; therefore when this case is closed, I am unable to see how there could be any evidence offered in the complaint case in regard to Section 1 that would be applicable to this case. It would be legally impossible.

Mr. Cardy: Here is the evidence I have in mind which would be material, that is, I have a couple witnesses here that I could put on at this time to show that the present rates on stone are actually higher than the traffic will bear. That goes under Section 1 and also goes to whether or not the present rates if we cannot move any traffic, are an undue burden on interstate commerce. If you will stipulate that, I can put in such evidence. I will argue the materiality of it at that time.

Examiner Faul: It will be so understood. (Tr. 3050.)

[fol. 1347] ROY W. FLETCHER was duly sworn and testified as follows:

Direct examination.

By Mr. Walter:

Am a statistician and selling accountant in the Daily News Building, Chicago. I have had 30 years experience in railroad accounting and statistical work, commencing in 1902 in Salt Lake, Utah, in the accounting department of the Oregon Short Line Railroad Company; was 14 years with that company, going through all the work in the disbursement and general accounts department and for 5 years was auditor of disbursements and general accounts, and 2 years assistant to the auditor; and during that time handled all accounting in connection with the maintenance of way, maintenance of equipment and trasportation and store department accounting; (Tr. 3051) and in addition, handled practically all of the statistics issued by the accounting department, because thosp were all consolidated and the final papers issued in the disbursement office. I prepared annual reports to State and Federal Commissions, annual operating statements for the management and data for annual reports to stockholders; filed data and testified in rate cases, one being the 15 per cent case heard in 1917 and compiled data for the Mail Pay case, begun about 1911; conducted confidential investigations for the President of the Union Pacific and Vice President and General Manager of the Oregon Short Line for legal and accounting operations. In 1917, resigned from the Oregon Short Line and entered the service of the Interstate Commerce Commission, reporting to New York City, as a Grade 1 accountant in the telephone and telegraph section; later became accountant in charge of that section which handled the valuation work of the Western Union and Postal systems that covered the entire financial story of their properties from organization to date of valuation; was trans-
[fol. 1348] ferred to Washington in 1921 as Assistant Supervisor of Accounts in the Accounting Section of the Bureau of Valuation. (Tr. 3052.) From then until February, 1926, was engaged in the preparation of valuation reports on railway properties, some of which, for which I had charge of the reports, included Union Pacific, Bur-

lington, Santa Fe, Northern Pacific, Atlantic Coast Line, Denver & Rio Grande and a number of other large railroads in the territory West of the Mississippi River (Tr. 3053); in addition had charge of force preparing reports on the smaller short line carriers, and during that time took care of about 800 of those; testified on behalf of Bureau of Valuation in working capital matters and in recapture cases; also conducted investigations for the accounting section of Bureau of Valuations as to depreciation of property; was member of committee that was appointed to study question of accounting in connection with the consolidation, merger and purchase of railroads. When preparation of the tentative valuation was transferred to the accounting section was in charge of that. On February 28, 1926, resigned from the Commission with intent to go in business for myself, but accepted a position with the Burlington on March 26, 1926, as its auditor of miscellaneous accounts in charge of additions (Tr. 3053), betterments and construction and valuation accounts and other assigned duties. Was immediately assigned to work preparing data in connection with the Hoch-Smith cases and other cases in Western trunk line territory, including the class rate, livestock and grain cases; also prepared data and testified on behalf of the Burlington in suit against the state of Nebraska regarding refund of $2,500,000 of taxes; testified before state commissions in several matters and constructed terminal cost studies; the first cost study was in connection with the class rate case, [fol. 1349] the Burlington Railroad being assigned 21 stations at which a study was to be conducted. I had charge of that, though I did not get into the detail of it because I was engaged in other work that took me out of the city. When the switching case came up the Burlington was selected as one of the roads to make a study, and I carried on that work, all of which was done under the method prescribed in the Saur-Coverston formula. On October 1, 1928, resigned from the Burlington and engaged in business for myself, since which time have been assisting small carriers in their valuation matters under valuation orders of the Commission (Tr. 3054) in connection with preparation of recapture cases. Compiled accounting valuation data for the Boyne City, Gaylord and Albany, a property acquired

by the New York Central under its unification plan; testified before the arbiters and the Commission regarding that case; conducted a study for the purpose of determining amount of damages in rebate case resulting from a railroad engaged in the production of gravel in competition with a shipper on its line. I testified in the switching case in behalf of the Burlington for about 15 minutes, I think. My connection with the hearing was to this extent: I attended hearing on the forenoon of the first day and the hearing in the forenoon of another day, and one other time was there a short time towards the close of the hearing at the Edgewater Beach Hotel, in which I answered certain questions propounded by the Illinois Commerce Commission. (Tr. 3055.) I did not submit any exhibit in that case My only connection with the work that entered into the case was to conduct the collection of data on behalf of the Burlington Railroad; was a member of the general cost study committee that assembled for the purpose of discussing the manner of procedure; all work I did was in connection with the Saur-Coverston formula; outside of that was the assembling of data under such formula as [fol. 1350] they thought proper to be chargeable to the different accounts for the accounting period. Outside of those matters and the general discussion in the committee, had nothing to do with final matters considered by what I understood to be the hearing committee in regard to exceptions that were raised and ironed out, or attempted to be ironed out by the shippers' representatives; had no part in the deliberations except to furnish data regarding allocations for circuitous routes on 2 movements involving the Burlington. My first employment by the protesting shipper interests was in connection with the preparation of the reply to the proposed report, about June, 1929, I think, having resigned from the Burlington October 1, 1928. (Tr. 3056.)

(Transcript record page 3057 shows: The discussion by the witness of pages 1 to 28, both inclusive, of Exhibit No. 120, and cross examination in connection therewith is set forth in the record in Docket 24950, pages 102 to 163, both inclusive. (Abstractor.))

Pages 29, 30, 30½, 31 and 32 of that exhibit are shown for the same general purpose of making comparison of

total cars for the month of September, 1926, and for cars shown as study cars; of course they are not study cars because there was no study of any car moving in September, 1926, so far as cost of movement was concerned; but using for explanation in connection with one-line movement, column 4, page 29, we find there is quite a variation between the movements. (Tr. 3057.) If we are to have a fair cost of the Chicago switching district it is necessary to make a very careful checking of the cars in the different movements, and all of the railroads involved should be studied to see how the cars move, because necessary to balance it as between railroads, as between classes of traffic, and when you get into individual classes of traffic, that is, all commodities, it is necessary to know between what points those cars move, because there is a different rate to [fol. 1351] different industries, and you must have a representative, a sample, of the whole. That is all I have to say. (Tr. 3058.)

Mr. Davis: I want to move to strike out the exhibit and testimony of this witness. I want to renew my motion at the close, when he says that is all he has to say. It has no bearing on the issues involved here; it is only an attempt to have the case, Docket 19610, reopened in regard to the cost study, which attempt has been denied twice or three times by the Commission.

Examiner Faul: It seems very evident that Exhibit No. 120, and especially the first 28 pages thereof, relate primarily to the reasonableness of the rates; there is no segregation either in the exhibit or in the testimony by the witness as between interstate and intrastate movements, with the exception of the latter pages of the exhibit, that is, pages 29 to 32, inclusive. (Tr. 3058.) At the outset of this hearing it was stated that the two cases would be kept separate, and in order that that procedure may be followed, the examiners now rule that this Exhibit 120 (Tr. 3058), pages 1 to 28, and the witness' explanation thereof, should be taken and transferred bodily to the complaint case, being No. 24950, and the remaining pages of the exhibit, 29 to 32, inclusive, and the explanation thereof, properly remain as a part of the Section 13 case.

Mr. Walter: But the stipulation, as I understand it, is, so far as what you have now transferred to the formal complaint, is material to the 13th Section case. It is a

part of this case; so the only question left to determine, is whether, in the Section 13 case, the reasonableness of the intrastate rates is involved. If that is true, then you are bound under the stipulation to consider it, so it does not make any difference which record it is in. If it is material to the issue it has to be considered. If it is material in the [fol. 1352] other case it is material here.

Examiner Faul: And the Commission in the end will determine whether or not it is material. (Tr. 3059.)

Mr. Walter: That is right; it does not make any difference which case it is in or which record it is in. I except to the examiners' ruling that it be transferred bodily, and hope that won't be done. Take Mr. Fletcher's testimony and incorporate it in whatever record has to be made up for court procedure, if any.

Mr. Davis: That is the reason I made the objection; if he wants it in 24950 of course he can have it in there.

Mr. Walter: The point I now make is, if we are going to have to make up a record later in an appeal to set aside an order of this Commission, I want the record to show that this testimony was entered into the 13th Section case and the examiners excluded it.

Mr. Davis: On my objection.

Mr. Walter: Yes, on your objection. (Tr. 3060.)

Cross-examination.

By Mr. Davis:

Regarding pages 29 to 32 of Exhibit 120, it goes beyond the exceptions to the proposed report by the shippers, that the month of September, 1926, did not show an average condition in regard to the number of cars handled of the different commodities shown. We are dealing on the one hand with total number of cars, both so-called study and non-study cars. As I understand the figures for column 3, they represent movements for which there were comparable movements based on the test studies in the week in 1927, using all of the study ratios to match up a complete haul. In a general way this same contention was made in the exceptions to the proposed report, but the purpose of [fol. 1353] this statement is to show how it affects the individual commodities, and the exception made to the proposed report bore out that same general idea in a general way.

(Tr. 3061.) The one-line haul shown includes the one-line haul of the Elgin, Joliet & Eastern.

In my direct testimony I failed to comment on certain items on page 29; item 37, asphaltum. The study shown is 115 per cent; that indicates that somewhere along the line there is an error. It is not a proper showing, because you could not have more study cars than you had total cars, and I think it is just a question of classification between groups. The same situation appears in column 7, items 64 and 65, showing the study cars are way beyond the total cars. I show these as indicating things that were noted. They are not of special significance because I think possibly what is shown for item 66 probably applied against item 67, or vice versa.

Regarding those percentages, the study was based on one week's time, whereas this is a showing for four weeks, and the actual test was for about one-fourth of this percentage.

Mr. Davis: Now, finishing my cross examination, and with the witness' explanation of pages 29 to 32, both inclusive (Tr. 3062), I move that those pages of Exhibit No. 120, as well as the testimony given in connection therewith, both on direct and cross examination, be transferred bodily with the rest of the exhibit and testimony to Docket 24950.

Examiner Faul: The motion is overruled. Is that all, Mr. Davis?

Mr. Davis: Yes.

Examiner Faul: I notice the title page of Exhibit No. 120 includes I. C. C. Docket 2900, which was included in the original proceeding, but the scales therein under suspen- [fol. 1354] sion were required to be cancelled, and therefore that docket is not involved in the further hearings. Elimination of that also technically removes the Chicago Heights issue from the Section 13 proceeding, as it was because of that docket that Chicago Heights was in the original proceeding. Throughout the prior hearing Chicago Heights took the position that it was entitled to the same rates as applied within the Chicago switching district. (Tr. 3063.)

For that reason, and because those interests have interposed no objection to the evidence which has been received at the further hearings with respect (Tr. 3063) to Chicago Heights, and assume they desire to be governed by the Chicago district rates. Mr. Walter can speak for Chicago

heights, or Mr. Pierce. I would like to have them make a statement so that the record would be clear on that point.

Mr. Pierce: Mr. Examiner, we do not understand that the question of relationship of rates between Chicago Heights and the district is involved in this case; and our position is the same as it was in the former case. Does that answer your question?

Examiner Faul: Well, in the former case I understood you desired to stand or fall with the rates which would be prescribed within the district.

Mr. Pierce: That is our position now.

Examiner: And therefore you will raise no technical objection to Chicago Heights being considered in connection with these further hearings. Is that correct?

Mr. Pierce: That is right. (Tr. 3064.)

Mr. Walter: Mr. Examiner, I move to strike from the record Exhibits 101 to 110 inclusive and the testimony in relation thereto, for the reason that the details upon which the exhibits are based, particularly those that deal with [fol. 1355] the study in November, 1931 (Tr. 3064), and January, 1932, have not been available for our examination or criticism in any way, nor is there any tariff reference as to the rates, as required by the rules of the Commission. (Tr. 3065.)

Mr. Shafer: In behalf of the Illinois Commission I wish to join in the motion.

Mr. Davis: This is the first information — had that there was a desire to study the work sheets. They have been in the office and ready for perusal any time they wanted them, and I so advised Mr. Walter when he wrote about wanting access to the underlying work sheets in the cost study in 1927 and cars that moved in 1926.

I said if any exhibit we introduced was based upon working sheets, that he would be given the privilege of examining those sheets at the proper time when called for, or words to that effect. This is the first time he has intimated any desire.

Mr. Walter: Early in this case I asked for access to the working sheets of the exhibits of the carriers offered in this case. If they now say we can have access to them for such purposes as we desire, that is satisfactory.

Mr. Davis: We have the working sheets for those studies, November, 1931, and January, 1932; those are in Mr. Viv-

ian's office and whenever the shippers want to send anyone there to examine them, study them or work on them (Tr. 3065), they are privileged to do so.

Mr. Walter: All right.

Examiner Faul: Do you withdraw your motion, then, Mr. Walter?

Mr. Walter: So far as these two exhibits are concerned, and so far as the motion is predicated on the plan to give us access to the papers was concerned; but I still stand [fol. 1356] on the exceptions so far as they are based on anything which are not in the cost study, the revenue study of 1927 and 1926 and the failure to comply with the rules as to tariff references (Tr. 3066); wherever rates are referred to in the exhibit there should be tariff reference so we can verify the rate.

Examiner Faul: The examiners have requested the carriers to give us a corrected Exhibit No. 101, and assume that they can furnish that exhibit within ten days from the close of the hearings.

Mr. Davis: I want a clear understanding of that, because Exhibits numbered 99 and 100 are the ones based upon September, 1926, simply bringing that exhibit 11-A down to date. There are not any rates mentioned there, it is revenue all the way through. I do not know whether Mr. Walter has reference to revenue in using that as rates; I do not know. Exhibit No. 101 covers November, 1931, and I do not think any rates are shown. Mr. Vivian explained on what the revenue was based, based on the Commission's 3 cents, 3½ and 4 cents.

Mr. Walter: No, on present revenue. (Tr. 3067.)

Mr. J. S. Brown: Some of these exhibits are combination rates. We cannot tell how they are made up. We would like tariff references to them. I cannot check them, in either Exhibit 101 or Exhibit 103.

Mr. Davis: What they desire now, as I understand, is the tariff references to the rates that produced the revenue that is shown in the exhibit.

Examiner Faul: Yes, and also, Mr. Davis, the recapitulation showing what the estimated annual net loss would be by the elimination of those particular items that were questioned in the prior sessions.

Mr. Davis: That is being worked on, of course. In regard to the tariff references is what I was wondering about, [fol. 1357] and what it is they want shown. (Tr. 3067.)

Examiner Faul: Could you submit the tariff references at the same time when the corrected exhibit is submitted?

Mr. Davis: As far as the two-line and three-line hauls are concerned, I suppose we could work that up readily, because that is in Galligan's tariff; but as to single-line rates, those are in each of the 35 different roads that serve the district and may not be in one tariff of each of those roads, but may be in different tariffs of the roads. It will take some time to work that up.

Mr. J. S. Brown: Mr. Davis, the so-called Galligan tariff would not cover combination rates on grain.

Mr. Walter: Mr. Examiner, I move that each respondent that is a party to joint through rates with the Elgin, Joliet & Eastern, now moving on the switching rates, shall file a statement showing, for the period covered from December 10, 1931, to March 31, 1932, the difference in revenue between that actually received under the rates as reduced, and what it would have been had the line-haul rates remained in effect; and second, that the Elgin, Joliet & Eastern Railway Company show reduction in revenue which has resulted from the establishment of the switching rates in lieu of line-haul rates, and the amount of the saving which has accrued to its shippers (Tr. 3068) by reason of the fact that no 10 per cent increase was applied on the switching rates.

Examiner Faul: There was no change in the service rendered subsequent to the reduction, is that correct, Mr. Davis? In other words, they were line-haul rates prior to the reduction, and they are still designated line-haul rates.

Mr. Davis: Well, there has been so much smoke in regard to the Elgin, Joliet & Eastern Railway here that I have asked their vice president in charge of traffic to put in some rebuttal on some of those questions you have [fol. 1358] raised, and I suggest when he is on the stand that you will learn all about those changes that were made and the reasons for them. (Tr. 3069.)

Examiner Faul: We will withhold ruling on the motion until after the witness of the Elgin, Joliet & Eastern testifies. In order that the record may be clear, the examiners request that the carriers endeavor to furnish the tariff references referred to and the corrected statements with

respect to the exhibits referred to, within the fifteen days from the close of this hearing.

Mr. Walter: We rest. (Tr. 3070.)

T. E. Bond was duly sworn and testified as follows:

Direct examination.

By Mr. Davis:

Am vice president of the Elgin, Joliet & Eastern Railway Company, and have been connected with that road for 24 years in its traffic department; am familiar with traffic on that line. The rates in the Calumet district, Chicago district, were changed on the line about December 10, 1931. A part of our road lies within the Chicago switching district, and we operate it therein. (Tr. 3071.) We serve South Chicago, Whiting, Hammond, East Chicago, Indiana Harbor, and Buffington, all being points within the Chicago switching district. (Tr. 3072.) At Gary, Indiana, we have a yard known as the Kirk yard, that serves the entire district. It is partly in the geographical limits of the so-called Chicago district. Rates from Buffington were reduced in the order of the Commission in Docket 19610. (Tr. 3072.) Rates from that point were higher on cement, being the only commodity produced at Buffington, than on any other commodity in the Chicago district. They were 5 [fol. 1359] cents for single-line haul, with varying rates ranging from 6½ cents up for two-line hauls. They were reduced in accordance with the decision, to 3 cents for single-line, 3½ cents for two-line and 4 cents for three-line hauls. The Buffington cement rates have grown up until they reached the basis existing prior to the time we put in these Chicago district rates. Originally they were 2 cents in the district for single-line hauls and combination rates on other hauls, which was during production of cement in South Chicago as well as Buffington. On August 1, 1911, the 3-cent rate applied to single-line industries; on June 25, 1918, cement was advanced 2 cents per hundred under General Order 28, and September 2, 1920, there was a 30 per cent advance under Ex Parte 70, which brought the rate to 6½ cents. December 15, 1920, it was corrected to 40 per cent under Ex Parte 74, making it 7 cents, followed

by a 10 per cent reduction, bringing it to 6½ cents. On December 10, 1931, we made the rate, 3, 3½ and 4 cents, which is the basis prescribed by the Commission for all commodities moving in the Chicago district. (Tr. 3073.) The rates on practically all commodities moving prior to this order were 3 cents for single-line hauls and 5 cents for joint line hauls, whether two or three lines. There was some exception to the single-line haul rates, wherein 3 cents was made 60 cents a gross ton on certain commodities such as waste materials, slag, cinders, etc. These were all changed to a uniform basis, 3 cents for single, 3½ cents for two, and 4 cents for three-line hauls, effective December 10th and applied to interstate traffic. The minimum was advanced to a uniform minimum of 60,000 pounds. In fact, whenever it was a change, I think it was an increase. (Tr. 3074.) If there was any intimidation used in making these [fol. 1359a] rates via the Elgin, Joliet & Eastern it was on the part of the Interstate Commerce Commission in making the order. I do not think we could have done anything else but put the rates in. The rates were put up in the regular way. The situation was explained to the connections and they concurred in it. The Interstate Commerce Commission has of course prescribed a number of scales of line-haul rates applicable to and from points in the Chicago district.

Mr. Davis: Suppose you give us some of those rates in regard to 5, 10, 15, 20, 30 and 50 miles.

Mr. Walter: I submit this is not rebuttal of anything that has been offered in this case. We presented no statement of rates at all. I object to it is not being proper rebuttal.

[fol. 1360] Examiner Faul (Tr. 3077): What do you intend to prove by this question?

Mr. Davis: I want to show what the rates are that have been established by this Commission or by the Illinois or Indiana Commission, to rebut any testimony that either of the state Commissions put in that the state rates are reasonable.

[fol. 1361] Examiner Wilbur: The witness may answer.

The Witness: We have selected a few samples, coke rates prescribed by the Commission in the Indiana Coke & Gas Company v. Ahnapee & Western, 155 I. C. C. 70, scale for 5 miles, 90 cents.

Mr. Walter: Just a minute; I object, Mr. Examiner; that is no answer to anything that has been put in this record. It is not rebuttal at all. He is now undertaking to make up a case which he realizes he has failed to make on his direct. It is too late to get it in. (Tr. 3077.)

Mr. Shafer: Furthermore I do not see what bearing the mere showing of line-haul rates can have in connection with these switching rates.

Examiner Faul: The motion is overruled. The witness may answer.

Mr. Walker: Exception.

Examiner Faul: It will be noted.

The Witness: In that case the rate prescribed for 5 miles is 90 cents a ton; 20 miles, $1.00 a ton; 30, $1.10; 50 miles, $1.30. In Atlas Portland Cement Company v. Chi- [fol. 1362] cago, Burlington & Quincy, 81 I. C. C. 1, the Commission prescribed a rate for 5 miles of 6½ cents; 20 miles, 7 cents; 30 miles, 7½ cents; 50 miles, 8 cents. (Tr. 3078.) These cases I am citing refer to Chicago. Sand and gravel was not in this territory. The rates on iron and steel prescribed by the Commission in Docket No. 17000, part 6, for interstate application were for 5 miles and under, 6 cents; 20 miles, 8 cents; 30 miles, 9 cents; 50 miles, 11 cents; and the scale approved by the Illinois Commission on the same articles intrastate in Illinois was for 5 miles, 6 cents, 20 miles, 8 cents; 30 miles, 9 cents; 50 miles, 11 cents. The so-called Pennsylvania scale applied by carriers in Central Freight Association territory after the decision of the Commission in Docket 17000, part 6, starts with 3 cents for 5 miles or under; 5¼ cents for 20 miles; 6½ cents for 30 miles; 9½ cents for 50 miles. Fifth class rates in the Eastern class scale case prescribed by the Commission, I. C. C. Docket 15879, were 5 miles, 11 cents; 20 miles, 12 cents; 30 miles, 13 cents; 50 miles, 15 cents. The sixth class rates in that proceeding were 8 cents for 5 miles; 9 cents for 20 miles; 10 cents for 30 miles (Tr. 3079); 12 cents for 50 miles. Those scales applied to and from Chicago on the commodities mentioned. Those line-haul rates cover deliveries within the district.

A switching line, in addition to the line-haul carrier making delivery in the Chicago district, out of those rates would get, for single-line, 2 cents per hundred pounds, minimum of 60,000 pounds, subject to a maximum of 50

per cent of the rate. If an intermediate line is used it gets its intermediate switching charge, which is $5.40 or $6.30, according to the line, and the terminal line gets 2 cents per hundred pounds, minimum 60,000 pounds; and in addition the terminal line is allowed approximately 5 days' [fol. 1363] reclaim; intermediate line is allowed 1 day's reclaim for the handling of the load and 1 day's reclaim for handling the empty. In addition to the division which the intermediate line gets for the handling of the load, it also gets a division for the handling of the empty, if the empty is returned to a home line or to the line that delivers it to them. (Tr. 3080.) On the switching charges the present basis for a two-line haul is 50 per cent for each line; for three lines the originating and terminating lines get 37½ per cent each and the intermediate line 25 per cent. Each line stands it own per diem while the car is on its rails. The present two-line rate on intrastate traffic is 2½ cents; on interstate it is 3½ cents, which would mean that on a 60,000-pound car moving interstate traffic over two lines, each line would get $10.50 for the 60,000 pound car. Out of that each would have to pay the per diem expenses accruing on its line. For a three-line the terminating and delivering lines would get $9.00 per car each, and the intermediate line $6.00, based on 60,000-pound minimum. (Tr. 3081.) If the car was handled in line-haul service coming to Chicago, the terminal line, if one was used, would get $12.00, or 2 cents per hundred, minimum 60,000 pounds; provided that the minimum of 50 per cent of the revenue did not come into play, which is not very often, $12.00. In addition to that it would be allowed to reclaim against the trunk line delivering the car to it for 5 days. It would have 5 days' free time to handle the car (Tr. 3081), which would be approximately $5.00. The average detention on intradistrict movement on one-line service was shown to be 6.6 days; two lines, 7½ days; so that out of whatever earnings they would get for two-line haul; you would have to deduct $7.50 from the line-haul carrier, which would be the amount it would have to pay to the owning line. There would not be a great deal left on that basis. In the two [fol. 1364] classes of service the terminal line would get a great deal more out of the line-haul business; get a greater division in cents per hundred pounds, and it would have the advantage of the reclaim; and that would be true

whether it was 2½ cents for single-line and two-line, or whether it was 3 cents and 3½ cents for the haul within the district.

We cannot move a shipment from South Chicago or Whiting in the district without moving it through the Kirk yard. All cars moving between points on the line in the district must go into Kirk yard. (Tr. 3082.) The 4th Section sets the rates at Gary. A shipment going from South Chicago to Hammond, for example, moves over our Lake Shore line into Kirk yard, and thence on the Joliet division into Hammond. Kirk yard is Gary. Both South Chicago and Hammond are without question within the limits of the Chicago district as defined by the Commission in its order, and we had to publish the district rates from South Chicago and we could not publish lower rates from South Chicago than from Gary where our road is located, without violating the 4th Section.

Cross-examination.

By Mr. Walter:

Prior to these changes we had not violated the 4th Section, because we carried the same rates. (Tr. 3083.) Our line connects with the Belt line of Chicago at South Chicago. On a two-line haul moving to the Illinois part of the district we make delivery to the Belt at South Chicago. That particular shipment would not go into Kirk yard. It is not a matter of our convenience that causes us to take shipments to Kirk yard. We could not move a shipment from South Chicago to Hammond without going through Kirk yard on a one-line move or deliver to certain con-
[fol. 1365] nections over there. (Tr. 3084.) We cut the switching rate from Gary to points within the Chicago district to the switching basis because of the 4th Section, and further because it has always been the policy of our company to carry Gary on the same basis as every other station there, no matter what the rate was. The Eastern boundary of the Chicago switching district, so far as our line is concerned, is the same now as it was prior to the decision in this case. I do not know of any change in the Chicago switching district. (Tr. 3085.) Kirk Yard is partly within the Chicago Switching District, and Kirk Yard is partly in Gary. Buffington is within the city limits

of Gary. I do not know whether you call the Indiana Steel Company in the district or not. Part of the town lies in the district, but I never heard of the Indiana Steel Company shipping anything. (Tr. 3085.) The Illinois Steel Company makes shipments from South Chicago and Gary. It has a plant at Gary that we have always considered in the Switching District and we maintained the same rates from Gary as from South Chicago. It doesn't make any difference what we call them, they were published in the local tariff. There was nothing particularly said whether they were line haul rates or not. I do not recall that we ever had the matter up in a proceeding before the commission. (Tr. 3086.) I do not recall having testified on that subject except in this particular case. We divided those rates with the Baltimore & Ohio Chicago Terminal and the Indiana Harbor Belt, on business moving from the Illinois Steel Company in the Chicago District by giving each of them 2¢ out of the rate of 5¢ and there were some rates divided 50/50 but I can't recall just what they were. The 6½¢ cement rate from Buffington, as I recall it, was divided for industrial delivery by giving terminal carriers 2¢. If team track delivery, it varied. We construed the decision [fol. 1366] of the Commission in this case as requiring the Elgin, Joliet & Eastern to reduce those rates from Gary and all points intermediate to Chicago, to the intradistrict switching basis and we made that reduction only because of the decision. I do not know that lines within the Chicago Switching District connecting with ours exactly objected to the application of the 3, 3½ and 4¢ rates in connection with our line; there were some negotiations. (Tr. 3087-3088.) I did not say there was any objection but there are always objections when you change anything. All the carriers with which we connect did not object and I do not recall those who did not object, although I can name one at least; the Monon did not, and I presume it has business to handle on that rate. It has some industries at Hammond not reached by our line. I cannot give the names of them. I do not know the name of one. I do not recall that there was any very strenuous opposition from any line with the exception of the Chicago & Northwestern we refer to. (Tr. 3089.) Originally there was, generally speaking, an objection from the line that had industries and whose revenue was reduced by the publication of these rates, but

as soon as the matter was explained to them, there was no objection; as soon as they realized the order demanded that action. I could not conceive of any other reason. There is not a bit of difference in the service we render today in handling traffic on the 3½ and 4¢ rates, and the manner in which we handled it when the traffic moved on the line haul rate, 5¢, 6½¢ or whatever it may have been on the different commodities. (Tr. 3090.)

A division of joint rates in the Chicago Switching District as between two carriers is 50/50; that is substantially the basis; there are some exceptions. The Illinois Northern, the Chicago West Pullman & Southern, and the Manu- [fol. 1367] facturers Junction do not divide on that basis. They get an arbitrary allowance. Mr. Brown advised that that is not true on intradistrict business and he is more familiar with that than I am.

Mr. Brown (Of the Belt Railway): All three points in the Chicago District are divided on the percentage Mr. Bond gave, the Illinois Northern, Manufacturers Junction and the rest. (Tr. 3091.) Out of the 7½¢ rate intrastate Illinois, between the Belt Railway and the Illinois Northern, the Illinois Northern would get 50 per cent.

The Witness (continuing): But on the line haul rates, the scale rates, that may cover these various commodities, I did not give the minimum, which is very important; minimum 60,000 pounds for the district, but when we come to line haul rates, the minimum varies between various commodities, but it does not make any difference to the switching lines. But out of the 5¢ rate or 6¢, whatever it may have been, in every case, the switching line gets less than it gets out of the intradistrict one line rate. It gets less in division. (Tr. 3092.) But the chances are the reclaim probably makes that up. It does. The minimum makes no difference to the switching lines because they get a minimum of 60,000 pounds, 2¢ minimum 60,000 pounds. The minimum on the road haul may be only 20,000 pounds or 24,000 pounds. On the scale rate for 5 miles the switching line would get 2¢ on 60,000 pounds but on the Chicago intradistrict, the intrastate switching rate of 2½¢ one line, the carrier gets 2½¢ and I would not say that the carrier is better off on the present switching basis than it is on the division of the line haul rate. The average detention

of one line car is 6.6 days in the Chicago District; as shown in the study, made in 1926, I think. I do not know, but I would say that the division today is as much as it was then, I could make a pretty good guess. As to the situation regarding divisions today, nobody else knows.

[fol. 1368] We have had a great deal of contact with the competition of trucks. (Tr. 3094.) No carrier has, to my knowledge, published any rates to compete with trucks. I do not think they need to. I think these rates are low enough to compete with trucks. We found it so. We took cement away from the trucks. I mean the 3, 3½ and 4¢ rates. We took cement away from the trucks because the railroads reduced their rates, but it was not meeting any truck rate. It was establishing the general basis prescribed by the Commission for all commodities. The reduction was from 5¢ to 3¢ for single line haul; 6½¢ to 3½¢ or 4¢ for joint hauls which was sufficient to send a considerable tonnage back to the rails. (Tr. 3095.)

I do not know the selling basis of cement. We never tried to meet competition of the trucks. The reduction was not made in order to get cement back to the rails but it did have that effect. Aside from the matter of cement, I do not know of any other reductions in switching rates that has resulted in taking away business from the trucks. We never lost any particular business to the trucks in the Chicago District except cement, and we lost substantially and practically all of that. (Tr. 3096.) We have industries on our line that own their own plant tracks; a good many of them and in numbers, I would say most of them. The Illinois Steel Company's tracks at the Gary plant are furnished by the Elgin, Joliet & Eastern. They are not maintained out of these rates of 3, 3½ and 4¢. We perform intraplant switching there from which we derive very substantial revenues, ranging from $5.00 to $20.00 per car. The $5.00 service is the ordinary intraplant movement from one place in the plant to another. It runs up as high as $20.00 because we have 40¢ down to the docks on finished iron and steel articles, minimum 60,000 pounds, but it loads much heavier than that. (Tr. 3097-3098.) This 2¢ per [fol. 1369] hundred is intraplant service. I could not give the maximum and minimum intraplant hauls. They vary however. There is quite a lot of track in that plant and I should say the maximum haul was possibly 2 miles. The

Standard Oil Co., the National Tube Co., and the American Bridge Co., serviced by our line own their respective industry tracks and each performs its own intraplant switching. There is no analogy between the 2 situations. The one where we furnish the tracks and perform the service at 2¢ per hundred and where the industry furnishes its own tracks, its engines and performs the service. (Tr. 3098.) We do the work in the plant for the 2¢ I am talking about. We do not do the work in the Standard Oil and the National Tube Company plants and I do not know whether or not they are able to do that for as little as 2¢ per hundred. The Standard Oil plant I referred to is the Whiting refinery. I have heard about truck competition with rail movement from that plant for line haul. On line haul business we made some rates to meet truck competition, the exact scale I have forgotten; but it was a scale which after consultation with the oil people was considered sufficiently low to take the business back to the rails. (Tr. 3099.) There is a one line haul from the Whiting Refinery to a point within the Chicago District, via our line and there would be a movement. So far as I know, we are getting that business moving at 3¢ between Whiting and Gary. I suppose there is a switching movement on the 3¢ rate from Whiting to Gary but Mr. Holland shakes his head. There is a movement there, whatever you may call it and the rate is 3¢, minimum weight 60,000 pounds. We have rates less than 3¢ one line on our road both in Indiana and in Illinois, (Tr. 3100) but we do not have an interstate rate less than 3¢ that I know of. Our rate from Joliet to the district on iron and steel is 10¢, 40,000 pounds minimum and we have rates less than [fol. 1370] that to points within the Chicago District. There are some rates as low as 65¢ for a single line haul from Joliet applying on crushed stone, gravel; billets, I think, about 70¢. (Tr. 3101.) I am not sure that we have rates less than 70¢. The Commission made an iron and steel scale and the minimum distance was 6¢ per hundred, minimum weight 40,000 pounds, which rate applied from station to station. (Tr. 3102.).

This scale has been modified for general use in Central Freight Association territory, and as I understand, is now

3¢ for 5 miles, 3¾¢ for 10 miles and over 5. It is what they call the Pennsylvania scale and was prescribed by the Pennsylvania Commission. The minimum rate in this scale for Central Freight Association territory is 3¢ up to 5 miles, effective November 10, 1931, in supplement 35, agent Jones Tariff, I. C. C., No. 2262, and the routing instructions permit the 3¢ rate to apply over roads that are respondents in this case, except the Pennsylvania, for a distance not in excess of 9 miles where the route is circuitous. (Tr. 3103-3104.) Prior to the decision of the Commission in this case, Whiting on our line so far as our tariffs were concerned, was in the Chicago Switching District. At that time the rate from Whiting to Gary on gasoline was 3¢. From Whiting into the Chicago District, 2½¢ but we published a rate of 3¢ and we did not maintain it on the Chicago Switching District basis; none of them were. In the previous hearing in this case in 1928, I said in my opinion this was all line haul business, not only our business but everyone's and that opinion has not practically changed. The Elgin, Joliet & Eastern is not now a member of the Chicago Switching Committee and it never has been. I do not know what committees are handling this case. (Tr. 3105.) I think they have a traffic committee, [fol. 1371] law committee and accounting committee. Although we are not a switching line, we happen to be a member of the committee representing the switching lines because our rates happened to be in question; at least so I have heard that they were.

Mr. Walter: That is all.

The Witness (continuing): You have not asked me your regular question and I was just going to say the United States Steel Corporation owns the stock of the Elgin, Joliet & Eastern Railway, you always ask me that. (Tr. 3106.)

Cross-examination.

By Mr. Shaffer:

I did not say that a scale of rates was prescribed by the Illinois Commerce Commission on coke. I said interstate Commerce Commission; and the rates I said were prescribed by the Illinois Commerce Commisison were some rates on iron and steel where that Commission adopted the

Docket No. 15110 scale for intrastate application. I did not say that the class rates referred to were adopted on state traffic, I said they were interstate rates. I cannot state the minimum weight in connection with coke rates. The minimum under steel rates on intrastate traffic is 36,000 pounds and on interstate traffic, 40,000 pounds. Under the 3¢ industrial rate for 5 miles, I think the minimum is 40,000 pounds but am not sure. If that is the correct minimum rate, the minimum car charge would be $12.00 (Tr. 3107.) But there is not much steel that moves at 40,000 pounds and I don't suppose there is much coke moving on the industrial rate of 90¢ per ton and I do not know of any movement around here. I did not say the coke rates prescribed by the Interstate Commerce Commission had been applied in Indiana, (Tr. 3108) and think that is also true as to the class rates; and the iron and steel rates pre-[fol. 1372] scribed by the Interstate Commerce Commission have been permanently suspended by the Indiana Commission and so far I know, it did not establish any scale and the group basis still remains in effect. The Elgin, Joliet & Eastern does not handle grain between points in the Chicago District that I know of. (Tr. 3109.)

R. L. WILLIAMS was duly sworn and testified as follows:

Direct examination.

By Mr. Davis:

I reside in Chicago and am assistant to the President of the Chicago & Eastern Illinois Railway (Tr. 3109) which serves Evansville, Indiana. I prepared the cost study in the switching case at Evansville to which Mr. Livinghouse referred when he was on the stand. The study conducted in 1928 and introduced in the Federal Court produced a cost of $7.90 per loaded car. (Tr. 3110.) There was a cost study made that involved 1931 but it was made before the case went to the master; before the hearing started. The cost study in 1931 produced a cost per loaded car of $12.17. In dealing with the cost study of 1928, and the one in 1931, the Public Service Commission of Indiana employed a firm of public accountants of Indianapolis and they had a new valuation made of the facilities used in switching opera-

tions in Evansville, which is substantially different from the valuation found to be correct by the railroads. These certified public accountants took the figures the Railway Company developed in 1928 and placed different interpretations on those figures and used in addition, the valuation that the Public Service Engineers developed, and arrived at a cost in 1928 of $4.31 per loaded car. They did not make any effort to restate the figures from the study introduced in 1931. (Tr. 3011.) If they made such effort, they [fol. 1373] did not introduce it in evidence in the case. I adopted their formula and valuation and applied it to the study which I conducted in 1931 and produced a cost of $7.46 per load, as contrasted with the one they worked out in 1928 of $4.81. (Tr. 3112.)

Cross-examination.

By Mr. Livinghouse:

In 1928, in the suspension proceedings before the Indiana Commission, the original case, our cost study showed $7.25 per car then we reworked the same figures before the Vanderburg Superior Court, and produced a per car cost of $7.08. The $7.90 cost was before the Federal Court. The per car cost of $12.17, I testified about, was the 1931 cost that we submitted at that time to the Federal Court. That was the 1931 study introduced in that court, and in that study there were certain minor items not shown in the original study before the Commission or before the Vanderburg Superior Court. (Tr. 3113.) In the last study, the items of cost were applied to an entirely different number of hours than the items of cost were applied to in the original study; 3 years intervened there.

In using the Commission's formula and valuation, the $12.17 per car cost become $7.46. I did not testify in that case that the exhibit showed that the 1931 cost study was not representative of normal conditions but I said it was representative of the period during which the study was made. I do not recall stating that it would not represent normal conditions. I hope it did not, it was in excess of normal conditions which has since developed. (Tr. 3114.) It is my understanding that the Indiana Commission did not make a cost study of its own either before the Vanderburg Superior Court or at the time of the suspension pro-

ceedings. (Tr. 3114.) It did not introduce it in evidence if it did. The cost study introduced by the Public Service [fol. 1374] Commission before the Special Master showed total operating cost to be $4.28 per loaded car and total cost including interest charges $4.81 per loaded car; that was on the basis of 1928 costs. The Commission's cost study in the Federal Court showed a smaller cost than that developed by the railway company.

Redirect examination.

By Mr. Davis:

In regard to the elements referred to by Mr. Livinghouse that were in our 1931 study and not in our 1928 study, they had no material bearing on the difference between the $7.90 cost in the 1928 study and $12.17 of the 1931 study. The factor causing the difference between $7.90 in 1928 and $12.17 in 1931, I understand was due to decreased volume. (Tr. 3115.)

Cross-examination.

By Mr. Walter:

We had to maintain a certain number of engines to handle the business offered and could not reduce engine hours the same ratio that the business decreased. I do not think the unit base of cost would have remained the same if we could have made a reduction in engine hours that would keep pace with reduced traffic because engine hour cost would go up. Engine hour cost did not go down because engine hours went down. Certain fixed charges that enter into engine hour costs are the same, regardless of the number of engine hours worked. If the volume in 1931 had been the same as in 1928, I think the cost would have been substantially the same. There has been a temporary reduction of 10 per cent in labor costs (Tr. 3116) which I understand will last for a year.

Recross-examination.

By Mr. Livinghouse.

There was some controversy between the Indiana Commission and our company as to the number of cars under

which the switching charge in Evansville should be made. The Indiana Commission contend- for one number of cars [fol. 1375] to be used in the Evansville study and the Railway a different number. That made the entire difference between the Commission's study and the study introduced by the railway in that case. In other words, that was the difference between $7.90 and $4.81, possibly including certain cars that were not involved, which the railway company contended should not be included and the Commission contended they should be. I am not at all familiar with this case. There wasn't any difficulty in trying to determine cost of handling cars in the switching district in the Evansville case. (Tr. 3117.) We had the cars eliminated to which the rates did not apply.

R. A. BARLOW, recalled, testified as follows:

Direct examination.

By Mr. Davis:

Was previously sworn and testified in this hearing.

When a loaded car moves between two industries, both located within the Chicago Switching District, via one line, the empty is taken from the storage or classification yard, to the shipper industry where plant service is performed. (Tr. 3119.) I was speaking of a one line haul when I started. (Tr. 3122.) But taking the Standard Oil Co., on our line, we do not perform service at their plant, it does it with its own engine; (Tr. 3122) but we take it to the place where we interchange with the Standard Oil. (Tr. 3123.)

Taking the Graver Junk Works at East Chicago, we handle the empty from our yard to the plant. The plant switching is then done; after the car is loaded it is taken from the industry back to the yard. If it was consigned to an industry at Harvey, say Bliss & Loughlin, the car is handled from the yard to the industry. After being un- [fol. 1376] loaded, the empty is handled in the return movement through the yard and back to the storage yard. (Tr. 3123-3124.) After loading at the industry it is first taken to the yard; back to the base yard and handled from there to the industry. But if we got that car in road haul move-

ment destined to that industry via our line in that case, the road haul carrier would deliver the car to the base yard and we would handle the load from there to the industry and the empty back to the base yard for the return movement to the originating yard. There is a great deal more service in the car going between two systems than in the line haul movement which would also be true of a two or a three line haul. In anyone of these cases there is this one additional industry service; (Tr. 3124-3125) that is involved in the intradistrict movement as compared with a road haul. (Tr. 3125.)

Cross-examination.

By Mr. Walter:

On a car originating at the Graver Junk Works, at Graver, destined to a point on the Chicago, Milwaukee, St. Paul and Pacific Railroad, the Baltimore & Ohio, Chicago Terminal, would deliver that car to the Chicago Milwaukee & St. Paul at Western Avenue yard. If this car was destined to an industry on the Chicago, Milwaukee & St. Paul in the district, and there was another car from the same point destined to St. Paul, Minnesota on the Chicago, Milwaukee St. Paul & Pacific, the service of the Baltimore & Ohio Chicago Terminal would be the same in every case. If one car coming from an industry on the Chicago, Milwaukee & St. Paul in the district and one came from St. Paul, via that line, both destined to Graver, we would get each car at the same place and would make the same moves and perform the same service on each of the 2 cars, so far as the Baltimore & Ohio Chicago Terminal is concerned.

If the Baltimore & Ohio should bring a car from Wash- [fol. 1377] ington, D. C., destined to an industry on the Chicago, Milwaukee & St. Paul in the district, and another destined to a point on the Chicago, Milwaukee & St. Paul, outside the district and our line delivered the cars from the Baltimore & Ohio railroad to the Chicago, Milwaukee & St. Paul, the latter would receive the 2 cars at the same interchange and perform the same service on the 2 cars in the district. (Tr. 3126.)

The Chicago, Milwaukee & St. Paul Railroad moving cars from an industry in the district one destined to a point

in the district and one destined to Baltimore, the service of the Milwaukee on the 2 cars in the district would be the same. (Tr. 3126-3127.)

Redirect examination.

By Mr. Davis:

But when you connect up the two there is one additional service in the district, as compared with the road haul.

Recross-examination.

By Mr. Walter:

With three lines involved the intermediate service would be the same, but each line performing the service at either end, origin or destination, there is more work. Assuming that two cars originating on the Illinois Northern are interchanged with the Chicago, Milwaukee & St. Paul and by the latter delivered to us, and one car is destined to a point in the district on our line and one is destined to Baltimore, the service of the two lines up to the delivery to us is the same in each instance, but the service of the Baltimore & Ohio Chicago Terminal is not the same in each case. (Tr. 3128.) Taking a movement of two cars in the reverse direction, one coming from Baltimore over the Baltimore & Ohio to our line, and one from an industry on that line, we would deliver both to the same point of interchange with the Chi- [fol. 1378] cago, Milwaukee & St. Paul, and that road (Tr. 3128) would deliver the cars to the Illinois Northern and the latter would deliver them to the industry on its rails. The service of the Illinois Northern would be identical on the two cars if both were going to an industry. Where there is a one-line haul that carrier performs both terminal services, and that may be done without going through any intermediate yard; and in the other illustrations that may move through three or four yards. (Tr. 3129.) That is also true in connection with line-haul movements. There may be in line-haul movement a movement through several yards or only one on the terminating line. The same base yard may serve both and that may apply on an intradistrict car, too. (Tr. 3129.) I would not say that because of a wide variety of service performed for two lines in the district, that a mere statement saying two lines versus one

line does not mean anything. It is all according to the origin and the destination of the shipment. (Tr. 3129.) As far as intermediate yards are concerned, you have to consider the identical cars and follow them over the various routes before comparing one route as against the other, and that applies for both kinds of shipments, either from an industry or line haul. There may be a vast difference between the cost of handling a particular car moving via two lines or via one line. But whether we have one, two or three or more lines handling industrial switching in the district, that traffic requires one more terminal service than the movement in connection with road haul. (Tr. 3130.) But it is also true that it may have a great many less intermediate services; and that may apply to either. (Tr. 3130-3131.)

Cross-examination.

By Mr. Shafer:

In handling the movement of a car between one industry [Vol. 1379] and another on our line, the first movement we make is to take the empty car from the classification yard and place it at the industry making the shipment; but that car might already be at the industry, and if it was there would not be that movement. I said it would be necessary to take that car from the industry back to the yard, but we might apply it on another assignment. Ordinarily we keep the empties in the yard where they are stored, and when we get an order for an empty it is supplied from there to the industry. I thought you were speaking of the empty. (Tr. 3131-3132.) But as to the load, that might go across the street. After it is delivered to the industry at destination I said the unloaded empty car would be handled back to the yard. But as a matter of fact there are occasions when that might be reloaded out of the same plant, in which instance it would not be necessary to move the car back to the yard; and those things apply whether it is road haul or switching district traffic or whether the movement is interstate or intrastate. There are a number of instances where the car is loaded out, that is, made empty at the industry. It happens occasionally, and vice versa. (Tr. 3132.) I would not say that as to some industries the percentage of outbound loading from cars already made empty at the industry would be high. (Tr. 3133.)

J. E. PIERCE recalled as a witness.

Direct examination.

By Mr. Cardy:

Am the same Pierce who testified this morning in Docket 19610. Answering the inquiry made this morning by the [fol. 1380] examiner I find the maximum haul for truck in the Chicago district is 17 miles, and that point is Chicago Avenue, just north of the Loop. The average trucking cost is $1.00 a ton. The University of Chicago has a track connection as shown in Galligan's list of industries in the Chicago district. The University of Chicago is the only point I showed on the map to which we truck coal from South Chicago. That map, Exhibit No. 119, indicated individual tonnages to plants, but as I explained, last year we trucked approximately 150,000 tons to various points around Chicago. The trucks moved back empty, but the figures I have given provide for 10-ton loads. (Tr. 3134.) As to the inquiry of Mr. Davis regarding the amount of bunker coal we furnished from our docks, I find our records show approximately 25 per cent furnished for 1931, and so far this year about 10 per cent. That is, those percentages apply to the total business we had there at the docks. Ten per cent today is bunker coal. (Tr. 3135.)

Cross-examination.

By Mr. Davis:

We make delivery by truck from the different distributing yards. The distributing yards have been open only about 8 months, and we distribute to the territory adjacent to them. The heavy tonnage still moves from the dock, because we are trying to use our dock facilities. The $1.00 per ton for trucking does not apply to sales to the householder. That is handled a little different. We do not use our own trucks from those yards. They are under contract or lease to handle that business for our company. (Tr. 3135.)

Examiner Faul: We will adjourn until 9 o'clock tomorrow morning, May 10, 1932. (Tr. 3136.)

Hearing reconvened at Chicago, Illinois, May 10, 1932, [fol. 1381] at 9 o'clock A. M.

G. F. VIVIAN recalled as a witness:

Direct examination.

By Mr. Davis:

I have testified previously in this proceeding. (Tr. 3137.) Mr. Brown of the Board of Trade first raised the question in regard to 67 cars of grain or grain products shown on page 2 line 1, of Exhibit 101. The 67 cars and that particular page are the recapitulation of the underlying details. The 67 cars are divided into 3 items shown on page 5 of the same exhibit, and Mr. Brown asked for an explanation of 62 cars shown on page 5. Those cars moved from elevator D to elevator C on 4 different days during the test period of November 9th to 15th. To move from elevator D to elevator C it is necessary to use a switch lead operated jointly by the Belt Railway of Chicago and the Chicago, Rock Island & Pacific Railway. This switch lead serves various industries besides the two elevators in question. (Tr. 3138.)

Cross-examination.

By Mr. J. S. Brown:

The 67 cars mentioned by you are shown in the first 3 lines of page 5, of which I have given you the movements of 62. (Tr. 3138.) In showing a charge of $3.60 for each of the 67 cars I show 2 cars on page 5 at $4.95, 3 at $12.00 and 62 at $3.15. The charge of $3.60 on page 2 is the weighted average; and to get that you add the revenues of the 67 cars and divide by that number. I could not give the tariff references for the 67 cars on page 2 because it is the composite. I know the movement between elevators D and C is open under the tariffs, and I presume the pub- [fol. 1382] lication of the rate of $3.15 per car by the Rock Island was as a special movement, but do not know what the underlying motive was. (Tr. 3139.) It is not specifically in the tariff as an interplant movement.

Mr. Brown: I move reference to these particular 62 cars be stricken. Intraplant movements are not in issue. I also

move that the 67 cars on page 2, showing the composite rate of $3.15, be stricken, because it is not the published rate in any tariff. (Tr. 3140.)

Examiner Faul: The motion is overruled.

Mr. Brown: We take exception to that. (Tr. 3141.)

Cross-examination.

By Mr. Walter:

There are no intraplant movements included in any of my exhibits. I did not call this grain movement intraplant because it is not, and it is not an interplant movement. (Tr. 3141.) As to the Chicago Junction, that applies to interplant movement only to the extent it is interdistrict. (Tr. 3142.) There are no Chicago Junction one-line haul figures shown any place in Exhibits 101 to 106. The Chicago Junction figures are shown in Exhibit 99 only, and no intraplant movements are shown in those exhibits, to my knowledge. I would say none were included for the reason that my recollection of that study at the time I handled it is that we were careful to exclude the intraplant movements. (Tr. 3142.) These are not the September figures; these were taken from Exhibit 101, and the 62 cars on sheet 5 are included with the 67 on sheet 2. Page 2 is a recapitulation of the underlying details. (Tr. 3143.)

Mr. Walter: Aren't we entitled to have the details of the movement of each one of these cars, point of origin and the destination in the district?

Examiner Faul: I think Mr. Davis offered yesterday [fol. 1383] afternoon to give you access to the working papers.

Mr. Davis: Yes. (Tr. 3143.) I said I had written to the Commission to that effect in regard to the exhibits that had the underlying data that would be offered.

Mr. Brown: That does not satisfy me.

Examiner Faul: In other words, in addition to the revenue, you desire to have the specific rates that were used in arriving at these movements.

Mr. Walter: Each movement.

Mr. Davis: We were to furnish tariff references, which we are going to do in the exhibit. The witness has said that page 2 is a composite and the basis for it is shown on the other pages of the exhibit. I do not see what could be clearer. (Tr. 3145.)

Recross-examination.

By Mr. Brown:

I could not say how many of these cars were moved more than once the same day. I have not checked it up. (Tr. 3145.) In the cars that moved on the four-dollar days there may be some that repeated, but I wish to emphasize the fact that it is not an intraplant movement.

Mr. Walter: We renew our request for detailed showing of each of the 1592 cars in the exhibit.

Mr. Davis: We have offered to let them go through the work sheets and work out anything they want. I do not think we should be put to that expense.

Examiner Faul: How long would it take? (Tr. 3146.)

Mr. Davis: It would take thirty days, considering the work we have ahead of us. We have several other cases waiting until I can get out of this one. I have to be in San Francisco on June 1st in the deciduous fruit case.

The Witness: I would say that to gather that informa- [fol. 1384] tion will require from 3 to 4 months' time on these two-weeks periods. We haven't any information on the movement of the car other than the fact we know the billing reference, which day it did move and the car initial and number, and the other information is shown on these exhibits. (Tr. 3147.) We do not know the engine that handled it or the time of day it was delivered from the plant. We have the routing.

Examiner Faul: The exhibits show the present and proposed revenues. In addition to that, the carriers have asked to give us corrected exhibits eliminating the exceptions. In addition they are going to give us complete tariff references, and in view of these facts and the fact it would take 3 or 4 months to give us the additional information the examiners will not require the case be delayed to that extent, and we overrule the motion. (Tr. 3148.)

Mr. Walter: It could not take 3 or 4 months. This was November 9th to 15th when the movement took place, and all of the examination and accumulation and tabulating of bills with that operation and all of that work that Mr. Vivian has had to do has been performed in that time. (Tr. 3148.) It cannot take 3 or 4 months. To enlarge upon

the expense and difficulty in order to prevent furnishing the information seems to me ought not to be encouraged by the Commission. We except to the ruling.

Cross-examination.

By Mr. Brown, continuing:

In making up Exhibits 101 to 103 the individual railroads furnished the individual slips containing the information, but did not make up the averages of revenue. I made that up myself.

Mr. Brown: So you mixed the intraplant—what I call intraplant, and I claim you have no right to say to the Rock [fol. 1385] Island that it is not intraplant movements—so you mixed up the intraplant with purely one-line industrial movements to get at the average which no one could get until they got your separation?

The Witness: I did not.

Mr. Brown: I maintain that no exhibit should be furnished that could not be properly explained and check by tariff reference.

Mr. Walter: I think it is only fair to warn these respondents that we shall insist in every form this case goes to that we are entitled to this disclosure. We request it.

Examiner Faul: The examiners have ruled on the point.

Mr. Walter: Exception.

Redirect examination.

By Mr. Davis:

There is a concern known as the Keeshin Motor Express Co., that files tariffs with the Illinois Commerce Commission in regard to its rates and I have its tariff No. 4 filed with that Commission, from which I have made a computation in regard to trucking rates for distances of from 10, 20 and 26 miles.

Mr. Davis: What does the tariff provide in regard to the minimum or the provisions under which they are trucking? (Tr. 3150.)

Mr. Hufsmith: I object, on the ground the tariff itself would be the best evidence and there is no use reading it out of the document. (Tr. 3151.)

Examiner Faul: This is a tariff on file with the Illinois Commerce Commission.

Mr. Shaffer: It has an Illinois Commerce Commission number but has no standing with the Commission. This company has a petition on file for a certificate of convenience and necessity which has been pending 10 months and the carriers are vigorously opposing the granting of [fol. 1386] the tariff, as the company is not obliged to charge rates published therein.

Examiner Faul: In other words, the tariff is filed with the Illinois Commerce Commission as a matter of information only. (Tr. 3152.)

Mr. Shaffer: Information for the public, and they put the Illinois Commerce Commission number on the tariff but it has no standing with the Commission. They have been instructed not to issue the tariff or put a number on it until they are granted the certificate. If they are granted one as the carriers claim they should not be. (Tr. 3152.)

Mr. Davis: We want to show this Commission from the best source we can in regard to what the trucking companies hold themselves out to do with tariffs filed with regulatory bodies. We are trying to get the information as best we can.

Examiner Faul: The witness may answer. It will be received for what it is worth with the explanation that has already been given.

Mr. Walter: An exception.

The Witness continuing: Item No. 65 revised, shows as minimum rates articles provided for the 5th class car loads in current Illinois classification and current official classification will be rated at 4th class. The 4th class rate for varying distance between 5 miles and 10, 15½¢; (Tr. 3153.) Between 10 miles and 15 miles, 16¢; between 15 and 20 miles 17½¢; between 20 and 25 miles, 18½¢, and between 25 and 30 miles, 19¢, per 100 pounds. I do not know whether or not these rates are actually collected.

Mr. Hufsmith: I move the testimony be stricken out. The examiner asked a question as to whether those tariffs were applicable or not. Evidently the question here is what someone has published in an unofficial report rather [fol. 1387] than what is actually transpiring and if there is any evidence at all, I think it is evidence that has no right

to be used or considered, and I move this testimony with reference to the tariff be stricken from this record.

Examiner Faul: The tariff apparently is filed for the same purpose the boat line tariffs are filed with the shipping board. They are maximum rates and with the explanation given by the representative of the Illinois Commerce Commission.

Mr. Shaffer: I do not think that quite correctly expresses it. This company can charge higher than that if it cares to. It is under no restriction from the Illinois Commerce Commission. They are neither minimum nor maximum rates. (Tr. 3154.) They are not bound by those rates at all. It is very apparent this witness has no knowledge whether or not these rates are charged or whether there has ever been a movement in connection with any of the rates.

Mr. Hufsmith: I renew my objection. Particularly in the light that he is reading from the tariff that is not in the record.

Examiner Faul: The witness clearly stated that he did not know whether any shipments moved on these rates; simply testifying that there is a tariff on file with the Illinois Commerce Commission which names those particular rates. (Tr. 3155-3156.)

Mr. Shaffer: Mr. Examiner, I want to object to that. That tariff is not officially on file with the Illinois Commerce Commission and the carriers are so contending in other cases before our commission; and we have recognized that it has no standing. Therefore, it is not on file with the Commission. They merely arbitrarily placed an Illinois Commerce Commission number on their tariff and have been advised it has no standing.

[fol. 1388] Examiner Faul: Has it been received?

Mr. Shaffer: It has not.

Mr. Hufsmith: I renew my motion that it all be stricken out.

The Witness (continuing): This tariff carries the stamp of the Illinois Commerce Commission received October 1, 1931, sections, rates and tariffs. (Tr. 3156.)

Mr. Shaffer: Every letter received in the Illinois Commerce Commission likewise has the stamp indicating it is received. It does not have the stamp of a tariff.

Examiner Faul: As before stated, the testimony will be received for what it is worth and with this explanation.

The Witness (continuing): The tariff recites: "This Company is not a common carrier and all freight accepted is transported by contract between the company and shipper or consignee."

Chicago is not shown in the list of points between which the rates apply.

Examiner Faul: I think that is a satisfactory explanation. (Tr. 3157.)

The Witness (continuing): The railroad carriers I represent, contract for trucking betwen stations (Tr. 3157), with trucking companies. There is a contract for trucking by the Langdon Cartage Co., between Clearing and Union Street. The trucking charge is 6¢ per 100 pounds for a distance of 14½ miles with no minimum weights and that charge does not include loading and unloading. There is a contract for trucking by the same company between Clearing and Proviso with a rate of 8¢ per 100 pounds which does not include loading or unloading and covers a distance of 17 miles. (Tr. 3158.) There is also another contract between this trucking company and the carriers for [fol. 1389] trucking between Cragin and Proviso at a rate of 5¢ per 100 pounds for a distance of 10 miles. The Chicago, Milwaukee, St. Paul & Pacific has a contract with Nielson Bros., for trucking between Healy Station and Union Street, at a rate of 8¢ per 100 pounds, minimum 6,000 pounds, for a distance of 5½ miles and the loading and unloading is handled entirely by the railroads. We have another contract from Western Avenue with the same company for 6¢ per 100 pounds, minimum 6,000 pounds, distance 1¾ miles, which does not include loading and unloading (Tr. 3159.)

We have a contract with Arthur Dixon Co., between Cortland St., and Union Street Station at 6¢ per 100 pounds, minimum 6,000 pounds for a distance of 2½ miles; which does not include loading or unloading. The Chicago & Northwestern Railway has a contract with Dunn Bros. storage warehouse for trucking from Rogers Park and Wilson Ave., to Proviso for 15 and 10¢ respectively, minimum

6,000 pounds. The 10¢ covers weights in excess of 6,000 pounds. The Ruby Motor Transportation Co., gives information as to how they base their cost figures. (Tr. 3160.) The items they include are only depreciation.

Mr. Walter: Just a minute. What is this you are reading from? (Tr. 3160.)

The Witness (continuing): Motor Transportation magazine for March, 1932. That is the official organ of the Texas Bus Owners Association and the Texas Truck Owners Service Bureau.

Mr. Walter: I object to this.

The Witness (continuing): When Mr. Brown, representative of the Illinois Brick Co., was on the stand, he testified in regard to the 30½¢ per ton charge for a haul of 5 miles and I have equated that to ascertain what it would [fol. 1390] be for the average hauls in this district. For a haul of 10.53 miles, the equivalent of 1 line, the rate figures 66.3¢; for the 2 line haul or 21.12 miles (Tr. 3161), it becomes 133.1 cents; for 26.01 miles for a 3 line haul, it becomes 163.9 cents. The trucking rate of 25¢ per ton for a distance of 3.5 miles from East Chicago to the Graselli Company I have equated with these results: For the 10.53 miles, becomes 75.2¢ per ton; 21.12 miles becomes 150.9¢ per ton and the 26.01 miles becomes 185.8¢ per ton. The trucking rate of $1.00 per ton for 17 miles testified to by Mr. Pierce (Tr. 3162) when equated, for the 10.53 miles, becomes 3.1¢ per 100 pounds; 21.12 miles becomes 6.2¢ per 100 pounds, and for 26.01 miles becomes 7.6¢ per 100 pounds.

We made an effort to secure trucking charges within the Chicago District and have prepared an exhibit giving the results of that investigation.

Mr. Walter: Mr. Examiner, until there is some showing as to the authority it won't be even marked because I object to it until he has qualified it as something other than the rankest hearsay. (Tr. 3163.)

Examiner Faul: I presume the witness will testify as to the source of the information.

The Witness (continuing): In the effort to get these figures, I requested Mr. Galligan to obtain for me information

in regard to the trucking rates. He in turn was forced to call upon the individual railroads for the information and the returns which the individual railroads made are incorporated in this exhibit, and the individual truckers giving the information shown in the exhibit in some instances permitted their names to be used. In other instances, they re- [fol. 1391] quired the suppression of the name.

Mr. Walter: All that is the rankest hearsay. It is not merely direct hearsay, but it is hearsay several times removed and is the kind of hearsay that is self serving. The higher these trucking companies can get the railroads to say their charges are and the higher they can get the railroads rates, the more business they are taking from the railroads. I object to this as being hearsay, incompetent, irrelevant and immaterial. (Tr. 3165.)

Mr. Hufsmith: As to which we have a further objection but according to the witness's testimony, certain of this data is in the nature of confidential communications to them; and there is no way to check, and there is no way to disclose the source of the information. They are putting in an exhibit through a man three hands removed from the source of the information; evidence which the gentleman from which the original source of the information came cannot or would not take the stand and give the information contained in this exhibit to these examiners. (Tr. 3165.)

Mr. Walter: It is not only unlawful, illegal testimony, highly prejudicial but it is unfair.

Mr. Davis: These are actual movements within the district.

Mr. Walter: No one has said they were actual movements.

Mr. Davis: No, it is actual movements by shippers. We have the information that it is actual.

Mr. Walter: Who said it?

Mr. Davis: Well, if that is not one of the companies whose name we have had to suppress, we are willing to give it. (Tr. 3166.)

Examiner Faul: Mr. Vivian, can you identify any of the [fol. 1392] movements referred to on this exhibit? Taking the trucking company handling that exhibit.

The Witness (continuing): I may not be able to give the trucking company, but I can give a specific movement from industry to industry, on approximately half of the illus-

trations. The others, the names of the companies or the industries were suppressed. (Tr. 3167.)

Mr. Tholin: I would like to have the record show that the Illinois Commerce Commission joins in the protest against this evidence.

Examiner Faul: Mr. Davis, is Mr. Galligan available? Can he testify as to this information having been given to him first hand?

Mr. Walter: Mr. Vivian says he cannot. Mr. Galligan got it from his solicitors who were employees of the railroad who got it from someone else, who were told what someone else did. That is a fair statement of the evidence.

Mr. Davis: You have to get evidence some way or other if you are going to offer it by one witness. He has Mr. Galligan's files here. He can tell where he got the information originally which was transmitted through Mr. Galligan to Mr. Vivian.

Mr. Cardy: I think we ought to have a man that talked to the industry and got the information originally. We ought to have the man that talked to Mr. Womer and Mr. Maynard and got this information. If he tells the truth about it, all right, if he does not, we want to be here to give the commission the true facts.

Examiner Faul: Undoubtedly this is hearsay evidence and the examiners will sustain the motion. We sincerely hope the shippers, as stated a while ago, will give us the information as to the going truck rates. The Interstate Commerce Commission would like to have this information. [fol. 1393] Mr. Walter: We are going to give it to you.

Examiner Faul: So far, we have not been able to get it. (Tr. 3169.) As stated before, there was a lack of shipper evidence in this case, but I think in order that the Interstate Commerce Commission may have all facts it is very necessary that we have information showing what the going truck rates are.

Mr. Davis: I want to serve notice now, Mr. Examiner, that there will be no truck evidence offered by the shippers in the formal complaint case without my objection. It is very obvious that these shippers have not gone on the stand in the 13th Section case because they do not want to be interrogated regarding discrimination. Mr. Walter is now waiting to put on his witness in the formal complaint case to bring out some alleged trucking competition and I

am going to serve notice now that I will withdraw from the agreement that I made in regard to stipulating (Tr. 3170) a part of that record into this one if he is going to insist on putting trucking evidence in the other case and expect to use it in this. (Tr. 3171.)

Examiner Faul: Under that stipulation, Mr. Davis, any information as to relationship of the truck rates to the all rail rates may be used in one case as against the other.

Mr. Davis: The purpose of tendering this exhibit is in the 13th Section case and this trucking evidence is proper in a 13th Section case.

Examiner Faul: The Interstate Commerce Commission is here trying to develop the record. Now if there is any testimony in connection with the complaint case which bears on the relationship of the rail lines and truck lines under the stipulation that evidence may be used in the Section 13 case.

Mr. Davis: Have you ruled out this exhibit.

Examiner Faul: The exhibit as a whole is ruled out. [fol. 1394] If Mr. Vivian has any first hand information he can testify as to those movements.

Mr. Davis: Would that first hand information mean, Mr. Examiner, that Mr. Vivian would have to handle the truck or see the truck move?

Examiner Faul: Direct information from the truck owner, or the man who did get the charges from the truck owner. (Tr. 3172.)

Mr. Davis: That is all, Mr. Vivian.

Cross-examination.

By Mr. Walter:

I am not positive that the trucking contracts I referred to covering movements between Clearing and Union Street, Proviso, Cragin, Healy and Western Avenue, are written. I believe they are in letter form of contract, but would not say for sure. I do not have them in my possession.

Mr. Walter: We ask that they be produced so we may see the contracts.

Mr. Davis: We will furnish copies of the contracts between Langdon and those companies he named.

Mr. Walter: As to every rate that you referred to, where the railroads have the contracts, we ask that they

be furnished to us before we further examine Mr. Vivian in regard to them. (Tr. 3173.)

The Witness: I took the rate, the trucking rate testified to by Mr. Brown as 31½ cents, which I said I equated. Mr. Brown testified that the cost was based on 10-mile trips, which would mean a 5-mile haul. Ten miles is twice the 5. The 31½ cents would become 63 cents, which is an equation. It is reasonable to assume that a 20-mile haul would cost twice as much as a 10-mile trip. If it cost 31½ cents [fol. 1395] to move 10 miles, I would say it would be reasonable to assume that it cost 63 cents for 20 miles, for the simple reason that it takes twice as long to go twice the distance. There is loading and unloading at each end and handling at each end. There would not necessarily be 4 handlings in the 20 miles (Tr. 3174), but Mr. Brown was talking about tank trucks and he did not include, as I remember, in his testimony anything about loading or unloading, but gave the total cost. In Mr. Brown's cost there is $240.00 labor cost by the hour and $240.00 for maintenance. The second $240.00 is for insurance. I presume the $240.00 is the term of the insurance. (Tr. 3175.) He said per year $20.00. The $200.00 item is depreciation at 20 per cent, and which I presume is time depreciation. It is a flat rate of depreciation, apparently, and the $100.00 is return on investment at 10 per cent, and that is time, too. The total license is $240.00, and for the year $20.00. In view of the cost elements Mr. Brown showed from those figures, it is my judgment that if it cost 31½ cents for a 10-mile round trip, that it will cost 63 cents for a 20-mile round trip. If the haul was a quarter of a mile, in all probability it would be 1/20 of 31½ cents (Tr. 3176), because he could make a great many more moves per day. It would not be a proper relationship, because there is always some loss at each end. When you have more terminal moves you lose a little bit more each move. You cannot be 100 per cent efficient on that basis. I never did any trucking with sulphuric acid. I do not know the size of the opening or vent through which sulphuric acid must move in entering and leaving the tank, or how many gallons there would be in 17 tons, or the time that would elapse in loading and unloading, or how much sulphuric acid weighs per gallon. I have not testified in connection with the cost of handling rail traffic (Tr. 3177)

[fol. 1396] in this proceeding. I did testify at earlier hearings, but did not testify in connection with the cost. I have not made any comparison with what I have said as to the cost of handling sulphuric acid for 20 miles or a quarter of a mile or 10 miles, or whether it is of any greater or less value as compared with relative rail costs, because I did not testify to costs in this case. (Tr. 3178.) I have not given any costs in this case. (Tr. 3179.) What I have said regarding costs of trucking I think is a reasonable assumption from Mr. Brown's figures, to which I have referred, and that it approximates the relative cost of 10 miles and 20 miles for trucking of this particular character. (Tr. 3180.) The principle I have applied in arriving at costs for handling sulphuric acid, 20 miles, is one that cannot be applied to the handling of rail traffic in the Chicago switching district covered by the cost study of 1927, because the two are unlike in many respects. One method is by rail and the other by truck, and with all of the ramifications that go with rail movement. Both movements are on highways. A rail highway is privately owned and used by that particular railroad. Road highways are primarily built for the general public (Tr. 3181) and not for the use of industrial concerns, and trucking concerns are already breaking down the highways and requiring the construction of heavier ones to support something that they pay no income to build. I frankly admit that remark has to do both with the movement of the commodity we are talking about and the injection of a little spleen against the trucks.

In saying that I thought the principle might be applied in determining the cost of sulphuric acid but could not be applied to rail movements, one difference making the principle inapplicable to rail lines is that in one case the road highway is one of public ownership, while the rail highway is privately owned, and that is a big factor in the proper [fol. 1397] computation of trucking costs. (Tr. 3182.) I think I have already given one particular element of the accounting principles that exist with reference to cost of trucking and that does not exist in determining rail costs, but there are so many others that you would burden the record with them; when you consider all the ramifications, the rail ramifications. I have never computed the trans-

portation of gasoline or sulphuric acid by truck. (Tr. 3183.)

Mr. Davis: We will excuse Mr. Vivian with the understanding he is to come back with those two or three contracts. (Tr. 3183.)

E. F. SAUR, duly sworn, testified as follows:

Direct examination.

By Mr. Davis:

Reside in Columbus, Indiana, and am connected with the Pennsylvania Railway and have been 44 years.

Mr. Walter: We admit Mr. Saur's qualifications.

The Witness: Am the same Mr. Saur who testified in Docket 19610 in the switching rate case. (Tr. 3184.) I was chairman of the cost study committee in that case. My experience in my 44 years with the Pennsylvania has been principally in the operating department, including maintenance of way, of equipment and transportation, and have been 16 years in this kind of work. I am familiar with Chicago in regard to its railroads, its streets and its general topography, having lived here part of 1900 and 1901. I was made chairman of the cost study committee, and preceding the May hearing we had an engine and a couple of coaches and spent 3 days going over very largely the cost study lines, with very little duplicate mileage or very little mileage on other than cost study railroads. In so far as it is possible [fol. 1398] for one man to truly absorb the magnitude of this district, I consider I am more or less familiar with the transportation facilities and conditions in Chicago. Am more familiar in a similar way with St. Louis and East St. Louis. (Tr. 3185.) In the fall of 1929 in connection with I. C. C. Docket No. 19594, the St. Louis and East St. Louis railroads were practically ordered by the Interstate Commerce Commission to make a study of trucking costs, and the Commission stated it would furnish a representative to assist in the preparation of a proper formula, which was done. The formula was applied to operations of 7 trucking companies, and one of the preliminaries to that study, the committee of eight, of which I was chairman, knowing

that neither the Commission nor the railroads had jurisdiction over the accounts of the trucking companies, I personally interviewed the executives of each of them and secured a pledge as to their cooperation to the fullest extent, conditional on my not revealing to any one company the figures relating to any other trucking company. I personally made that pledge and have lived up to it and the examiners sustained my position. Only one copy was made of all the work sheets and they were kept under lock and key, and I have never disclosed—there have been three hearings in connection with the case, and I testified in two of them, and I have kept my pledge by only stating composite figures. (Tr. 3186.)

Q. What was the result of that study?

Mr. Walter: I object. (Tr. 3186.) In the first place, this is 1929. In the second place, it is in St. Louis. In the third place, as I understand it, they were trucking companies that did work for the railroads. It was a question of the lawfulness of what you do, is that right?

The Witness: That is correct.

[fol. 1399] Mr. Walter: So we have no similarity of conditions at all, plus the purpose of the cost study. There they were trying to justify an allowance, and it had nothing to do with competition with the carriers. Had nothing to do with the situation in the Chicago district, and can have no possible bearing upon what the rates are here. I repeat again, that the only and the easiest way is to call the truck men here and find out what they get for the service and what the service is. The carriers can get that, and Mr. Saur's analysis of the situation in St. Louis can only have the effect of prejudicing the minds of the Commission, which does not stop to measure the difference in circumstances and conditions between that cost study and what we are investigating here. (Tr. 3187.)

Examiner Faul: You do not mean to say the Commission would not give consideration to all facts before it?

Mr. Walter: Technically it does give consideration to all facts, but the record is so great and the work of the Commission so great that it cannot pay attention to the details.

Examiner Faul: Mr. Davis, what do you intend to show by this?

Mr. Davis: I am going to show what it actually costs to truck. Here is a gentleman who has gone through that and

made an actual cost study of what it costs to truck, and he will give you the figures on which it was based in St. Louis, and we are going to couple that up, as we have already, to show the similarity between that and later testimony of Mr. Saur between St. Louis and Chicago. (Tr. 3188.) The purpose is to show what it costs truckers to truck.

Examiner Faul: That information is now on record in connection with the Interstate Commerce Commission?

Mr. Davis: Yes.

Examiner Faul: What is that case, Mr. Saur?

[fol. 1400] The Witness (continuing): Docket No. 19594, commonly known as the St. Louis transfer case. The exhibit that was offered as a conclusion in that case simply states total cost for 6 different services. It does not break down the total cost like I would expect it to show here, in order to show separately purely movement cost. Therefore while the exhibit is on file, showing the total result, it would require some amplification in order to reach what they are talking about here. (Tr. 3189.)

Mr. Hufsmith: Let us dispose of the objection here. We have an objection. (Tr. 3190.)

Examiner Faul: The witness has qualified as a cost expert. He has stated he is familiar personally with the conditions as they exist in Chicago and as they exist in St. Louis.

Mr. Hufsmith: That is by rail now. He has not said he knows anything about what it costs to move a motor truck 15 feet in the city of Chicago.

Mr. Walter: Let me make one other observation. Whenever carriers agree they will not use the information disclosed the individual furnishing it, and that they will use only the combined 7, the carriers thereby limit us without question about that evidence, and the witness has no right to make an agreement with the 7 trucking companies that would be binding on the shippers of Chicago or the state commissions of Illinois and Indiana. We shall make the most of the admission of this testimony in any forum where the validity of any possible order is involved. We are entitled to cross-examine as to the evidence of each 7 and if the evidence is admitted we shall insist on cross-examination as to that particular service. (Tr. 3194.)

Examiner Faul: The witness may proceed. The Commission will be the one to decide.

Mr. Walter: Exception.

[fol. 1401] Mr. Hufsmith: Exception.

The Witness (continuing): In normal times movement of this traffic between St. Louis and East St. Louis aggregates about 1,000,000 tons a year. I refer to the fall of 1929 as a normal time. The service is of 6 different kinds. Three of the services involve the use of off-track inland stations, and that service is in no sense comparable with what we are talking about here. The other three services involve interchange between rail stations; first as between rail stations of 11 East Side railroads and 7 West Side railroads. By far the bulk of interchange service is between rail stations of carriers in East St. Louis and St. Louis, aggregating about 35 per cent of the total, or about 350,000 tons a year. That is the principal service I had in mind that to some degree is comparable with what we are talking about here. (Tr. 3195.) It is comparable with the length of haul.

Examiner Faul: In what way is it comparable, by length of the haul or what other way?

The Witness (continuing): The length of haul, which I calculated in connection with another case, was 2.13 miles on the trans-Mississippi movement. The service is performed by tractors and semi-trailers, with floor space about 8 x 16 feet, averaging loading 6.4 tons, which is a very fair load. Several things contribute to the fact that conditions in St. Louis are more favorable than in Chicago, as the combination of these 6 services reduce average empty movement to about 12½ per cent. This trans-Mississippi interchange traffic involves first the rail stations on the East Side, and of the 11 roads 10 have their stations along the levee where there is a nice wide street and very little traffic. Since the municipal bridge at St. Louis was built with upper deck free to vehicular traffic, the vehicular traffic on the upper deck of the Eads Bridge is very largely [fol. 1402] confined to this transfer movement; very little other traffic. (Tr. 3196.) From the west end of the Eads Bridge to rail stations in north St. Louis the movement stays out of the dense downtown traffic; and the same is true to one of the South Side stations. To two of the sta-

tions located on 7th Street, about 7 blocks from the river (Tr. 3196), there is a movement of 4 blocks which first goes south, avoiding the downtown congestion, and then across the 4 blocks to those stations; so the service as to this trans-Mississippi interchange in several respects is favorable to the St. Louis movement. Unfortunately the distance does not compare with the one-, two- and three-line distances in Chicago.

Mr. Davis: What was the approach to the bridge, describe that.

Mr. Hufsmith: We would like to have the record show our same objection to the appurtenances and approaches to the bridge in St. Louis that we made to the rest of the evidence, and I suppose the same ruling.

Examiner Faul: Yes.

The Witness (continuing): The street in East St. Louis along which 10 of the 11 rail stations are located is practically level; the movement in this interchange from the east end of Eads Bridge across to rail stations in St. Louis is over practically level ground. The only difference is in the east approach to the Eads Bridge, where it is probably a third of a mile to get from the ground level to the upper deck of the Eads Bridge (Tr. 3197), but it is an easy grade, but I do not know the angle. The formula prescribes specifications, first as to assembling of the field data going to the basis of a record for a week of the time consumed, and the conversion of that time from accounts of the transfer companies into a cost. It prescribed a summary for breaking down that cost into 6 parts, one of which is the [fol. 1403] purely movement cost itself; another the loading and unloading; the clerical cost; loss and damage freight claims; bridge toll and ferry. But the result in this trans-Mississippi movement was $1.014 per ton for the movement only, which did not include loading or unloading; but with those factors added it became $1.41. And the 10 per cent return on the property investment, not 10 per cent added to the rate, but 10 per cent of the property investment, the figure became $1.56, and that is the figure that appears in the exhibit, $1.56 cost per ton; and just for the haul alone the cost was $1.014 per ton (Tr. 3198) for an average distance of 2.13 miles, with 12½ per cent empty haul, with average load of 6.4 tons. I began making cost studies in 1906 and for about 10 years

put in 30 per cent of my time in that sort of work, and for the last 16 years 100 per cent of my time. I cannot give an accurate account, but I would estimate that I have made at least 200 engine-hour cost studies. There is district switching, or switching of cars in the Chicago district that will have had, or will have, a road haul. (Tr. 3199.) Comparing like with like, it seems obvious that in the district switching there must be 2 industrial services, whereas fundamentally on the traffic that has received or will receive road haul there could only be one industrial service. If you want to compare like with like you would have to say that the district service is greater than the service involved in the traffic that has or will receive road haul.

Mr. Davis: In your experience in regard to the cost of one against the other of the two you have compared, which is the most costly?

Mr. Walter: I object until we have something more than has so far appeared. If it is based on the cost study in [fol. 1404] this case, and he states it is based on the cost study in this case, then it is only as to the materiality.

Mr. Davis: His general experience of 16 years he has spoken of. I am talking of the two kinds and asking whether he knows whether there is a difference in the two, and what is that difference?

Mr. Walter: I object to that; he is dealing here with 200 terminal stations. (Tr. 3200.)

Examiner Faul: From your investigation made in connection with this case, which of the two services is the more expensive?

The Witness (continuing): If you compare like with like, certainly the district service is the more expensive. If you pick out a district service involving two industrial services, which are the most costly of all elements of service developed, you can have two industries adjacent to each other and that cost would be less than the cost on a car that had received or would receive road haul, that had to be moved a great distance and through one or more classification yards and involved one or more transfers. But my point is that in doing that you would not be comparing like with like. Comparing like with like, I consider industrial switching the more expensive of the two, and for

the reason, as I have stated before, there is bound to be two industrial services, which are the most costly of any of the elements of service prescribed (Tr. 3201), and it takes a longer time per car to switch around an industry than it does in transfer service or interchange service or classification service. More time per car is consumed at the industry, because the movements are necessarily slower. There may be one or all of 6 different kinds of cars to be handled at the industry; their inbound loads and outbound loads; their inbound empties and outbound [fol. 1405] empties; their intraplant movements both for partial loading and unloading.

Cross-examination.

By Mr. Walter:

The investment part of the cost will not differ greatly because of greater value of tracks used in the one service than in the other, that is, line haul against line haul, if you compare like with like. In taking a movement from a junction on the Chicago, Milwaukee & St. Paul on the north side of the district, and a movement a much shorter distance within the district, you would not be comparing like with like. (Tr. 3202.) In comparing like with like, that is, switching service from the connection in the district to the industry, with the same movement of a car going through the same junction point, but to a destination in the district, whether it is one-line, two-line or three-line, you cannot escape the fact that there must be two industrial services on the district traffic and only one on the road-haul traffic, and I cannot leave that fact out of consideration. We have to have the movement to and from the industry. There may be a wide difference in the extent of the service performed by the carriers as between that performed for one consignor as compared with another consignor, such as volume of traffic; and volume of traffic has a great deal to do with it; and the complexity of the tracks involves time and terminals. (Tr. 3203-3204.) I stated the fundamental underlying principle clearly. Beyond that you can go into any refinement you care to as to taking an individual movement between one consignor and one consignee in the district and a representative movement on the line-haul traffic.

There were 7 companies in the trucking study at St. Louis and some of the trucking companies had business other [fol. 1406] than that of handling to and from the rail stations, and that business was included in the cost study to the extent that it was involved; and it was involved because a record was taken of all the time of all the vehicles of all the companies studied. We included all the costs for all of the time as to each of the 7 lines in connections with the specifications of the formula. (Tr. 3204.) We found the detailed information as to the movement per ton cost for each of the 7, but I cannot give the variation for each of the 7 because I haven't that detail. There was not a very wide variation. As a matter of fact, the costs of the different companies for the same services were not materially different. (Tr. 3205.)

Mr. Walter: I am not talking about the same service. I am asking you for the cost per ton per movement for each of the 7 trucking companies and I will ask for the names of the 7 trucking companies first per ton movement and second the total cost of handling including loading and everything and freight including 10 per cent return and want this information for each of the 7 and the disclosure of the names of the 7. We are entitled to meet this testimony and the *the* actions of the State Commissions cannot be stricken down on evidence that is undisclosed for purposes of rebuttal and purposes of cross examination and for calling other witnesses. (Tr. 3205.) I realize Mr. Saur's commitment, but that does not affect or bind us and we insist on the disclosure so we may meet the testimony.

Mr. Davis: Have you the names of the trucking companies that were involved?

The Witness (continuing): Yes, sir.

Mr. Davis: Does the Examiner desire that the witness read those names of the trucking companies into the record. [fol. 1407] Mr. Hufsmith: I see no benefit that would flow from it.

Mr. Walter: Unless he gives the details for each concern. I want the cost figures for each of the 7, the flow of movement, investment, etc.

The Witness (continuing): I would consider that a violation of my pledge.

Mr. Walter: Then I move to strike all of the evidence of your witness relating to the cost study of trucking at St. Louis.

Mr. Hufsmith: In which the Indiana Commission joins.

Mr. Shaffer: We join in the motion.

Examiner Faul: The motion is overruled.

Mr. Hufsmith: Exception. (Tr. 3206.)

The Witness (continuing): The Columbia was one of the companies involved and the Examiner who heard the case was Mr. Harry Ames.

Cross-examination.

By Mr. Walter (continuing):

Mr. Walter: Let me ask, is that the case Mr. Saur, where after the evidence was all in, a reliable trucking company offered to do all of the business of the 7, for $150,000 per annum less than the carriers had been paying, or substantially that?

The Witness (continuing): Well that has to do with negotiations leading up to the final settlement of the matter and I could not pretend to be familiar with that.

Mr. Walter: But isn't that your understanding that that is the case and that offer was made in good faith?

The Witness (continuing): I know there was an offer made for some reduced figure. But whether it was approximately $150,000 I do not know.

[fol. 1408] The service involved the movement of all cars of less than car load freight, generally speaking, merchandise; loading an average of 6.4 tons but the capacities of the trucks I do not know. (Tr. 3207.) I do not know the capacity of these semi-trailers. I do not know whether the total capacity would be some 3 times the average loading of 6.4 tons. I haven't the data with me that would show the capacity. I do not know how that loading would compare with the loading in the Chicago District. There is such a wide variety of commodities, merchandise movements here in Chicago.

Examiner Faul: Mr. Walter, won't it be all right if Mr. Saur can state what the findings of the Commission was in that case?

Mr. Walter: If it is in the decision of the Commission, it is there for the purpose of our brief. We can refer to the decision of course, but I have said so many times that here they are offering a character of testimony which it cannot be perceived what the cost is in the district. It bears no relation to competition between trucks and rail carriers, and the only true answer is what is the situation here. I am making my objection to the pertinency of the testimony. (Tr. 3208-3209.)

The Witness (continuing): In the movement between rail stations of 11 East side and 7 West side stations, I did not say there was some of that that was in, I said of the 6 services, I did not feel that 5 of them were as nearly comparable as this one trans-Mississippi movement. There was one service besides the 6 I mentioned, commonly referred to as direct delivery service where by reason of the rails of East side roads ending on the East Side, there has ever since 1906 been an arrangement whereby if a consignee elects to use that service, paying for what would amount to the movement to the West end of the bridge and [fol. 1409] without stopping the vehicle or making any physical change whatever, that drayline becomes the drayage company of the consignee and to that extent is paid beyond the West end of the bridge. That is not one of the 6 I referred to. (Tr. 3209.)

There was no service there that we studied where the movement was consigned from consignor to consignee by truck where it did not move to or from a rail terminal. It all involved rail haul, and in this case it is my understanding that the truck movement does not involve handling of rail traffic, but is from consignor to consignee and never touches the rail premises.

Mr. Walter: I move on that ground total dissimilarity of movement to strike this testimony from the record.

Examiner Faul: Does that make a difference in the cost of the truckers in handling the traffic.

Mr. Walter: Certainly. But we will go ahead with the cross examination. (Tr. 3210.)

The Witness (continuing): I do not believe the 3 services involving use of off track inland stations are at all

comparable. I gave you the 3 figures on trans-Mississippi interchange and I understand you want the same 3 figures for the other 5 services and to define each service as I go along. (Tr. 3211.) Following the 3 off track inland station services, I gave the number 1, and number 2 service would be the interchange between West side stations. (Tr. 3211-3212.) The interchange between West side stations, the movement cost was $1.144, the total cost without any profit was $1.40, with a 10 per cent return on investment, the figure was $1.55 per ton in all cases. The interchange movement cost between East side rail stations was 104.6 cents and total cost was $1.304 and with 10 per cent return on investment was $1.44. City outbound traffic to West side rail stations which involves the use first of the off track [fol. 1410] inland station movement the cost was 87.8 cents, Total 161.8 cents and with 10 per cent return on investment became $2.02. City outbound traffic to East side stations, the movement cost was 80¢, total cost 167.6 cents which with 10 per cent return on investment became $2.08. The city inbound from East side rail stations, the movement cost was 65 cents; total cost 228.2 cents; with 10 per cent investment added, became $2.79. That includes the 6 services studied. There is no absorption on city inbound traffic from West side stations. (Tr. 3212.) We did not compute the cost of that service because it was not involved. Under my obligation to the companies, I cannot give the same figures for each of the companies. It would not be fair to say there was a wide variety in difference for the individual companies, as in the consolidated returns. If you read the formula, you will see why. The formula is not in evidence. Not to my knowledge do these railroads own stock in all the trucking companies. (Tr. 3213.) That there was no intercorporate relationship or holding of stock by any of the railroads in any of the trucking companies was pretty thoroughly brought out in the first hearing, that there was no relationship. There was no study made to check up on these costs with the trucking costs between industries by other trucking companies at St. Louis. I do not know that it was shown that there was trucking as far as Wood River, Illinois, into St. Louis, at a less rate than the published switching rate. I did not make a study of the competitive situation at that point as betwen rail haul and truck haul in the district and have not done that elsewhere. I do not

know that railroads all over the country outside of the Chicago District are reducing rates to meet truck competition. (Tr. 3214.) The Pennsylvania has not consulted me as to how far it could shrink its rates to meet truck competition and not go below out of pocket cost. (Tr. 3214.)

[fol. 1411] Cross-examination.

By Mr. Hufsmith:

I have not used this formula for making similar cost studies as to motor vehicle transportation. This was the only trucking study I participated in; and I have made no study of such transportation facilities within the Chicago District, and am not in a position to state what those costs might be. Nor has any such data been compiled. (Tr. 3215.) We did not make a study in the Chicago Switching District to ascertain whether or not average cost of the service in industry switching was greater or less than the average cost of interchange at the classification yard with the line haul carrier, but I know that from my studies and all studies I have made. I was Chairman of the Chicago District Cost Study Committee and was in contact with all the results of its activities. (Tr. 3216.) I think there was an exhibit in the original case that showed those different average costs per element of service in interchanging with the line haul carrier, and in switching at an industry but I do not know what the difference was and to conduct such an examination in the Chicago Switching District, it would have to be compiled. (Tr. 3217.) We had to figure out what the average cost was for the delivering or picking up of a car at the industries. We figured all the interchange costs and all the classification costs and all of the transfer costs and all of the industrial costs were calculated. We computed average costs of all interchange service by the carriers who picked the car up at the industry and delivered it to the line haul carrier; the average cost of all interchange service at that point and did that for each individual line. If I understand your question that is to say from the industry to the point of interchange would be identical and the average cost would be the same whether the car was to go beyond that interchange point to another industry or in line haul. (Tr. 3218.)

[fol. 1412] The average cost of the movement from that point to the line haul carrier as against the delivery from

that point to the industry, insofar as the two kinds of cars had to be transferred and classified, the average cost would be the same. We can figure out the average cost of picking up the car at an industry or delivering it to the industry in the district. (Tr. 3219.) Or can figure the average cost of delivering the car to the line haul carrier. But I do not understand that is what you are trying to get at. The average cost of delivering a car destined out in line haul service in the district is different for every railroad and I cannot give you the average for that service and I cannot give you the average cost of service of delivering the car to the industry. I cannot conceive instances where the service in the classification yard at point of delivery to the line haul carrier might exceed cost of delivering the car or the service of delivering it at the industry. (Tr. 3220.) We have in the industrial movement 2 industrial services and in the line haul, we have but one industrial service and a comparable movement would be to have the 2 originate at the same industry and in that event one industrial service would be the same and if they moved through the same classification yard, one going to the industry and the other out in line haul service, they would still be comparable (Tr. 3221), as long as they stayed together and received the classification, one going out on road haul and the other brought to the industry. Assuming 2 cars originated at the same industry whether it be 1 line, 2 line or 3 line, and they stay together (Tr. 3222) until they get to the classification yard of the road haul carrier, all there is left to do with the road haul car to put it in a road haul train is to classify it. That is all that is left as to the switching service. To the extent that the 2nd car [fol. 1413] which is destined to a subsequent industry receives more service than that which the line haul car received, to get it into the line haul train, the added cost of the 2nd industrial service would certainly be an advance. That does not assume the first classification yard that the car comes into, is the point of interchange with the line haul carrier. I made an effort to follow you and I do not understand. (Tr. 3223.) In my answer, I had both cars moved into the classification yards, but I did not assume in my answer that from that point one would be taken to the industry by the switch crew and the other picked up by the line haul carrier.

Examiner Faul: Mr. Saur can you describe 2 actual movements so we will get away from this argument back and forth. (Tr. 3224.)

Witness (continuing): I tried to. Take a movement of 2 cars from the some industry by the same switching crew, assuming 1 coupled immediately back of the other and both just back of the locomotive and they are the only 2 cars the switching crew is handling and they take them to the classification yards, up to that point we can fairly assume that the cost of the movement of the 2 cars has been the same. (Tr. 3225.) If one of these cars is destined to an industry within the district, that would be served out of that classification yard, the car would be left there and subsequently delivered to the 2nd industry. (Tr. 3225.) As far as the first crew is concerned, it would leave that car in the classification yard. As to the road haul car, if the classification yard is the one that will classify the car into the road haul train, that is all the service that would be given that car, but the other car would receive the 2nd industrial service. In making this answer, I assume that the first classification yard reached by these two cars is the [fol. 1414] yard from which the 1 car is to move out in line haul service but that assumption does not make any difference (Tr. 3226) because that is the way I understood you. But assuming that these 2 cars were handled by the Pennsylvania Railroad and moved to the classification yard, and if the Pennsylvania would move the line haul car to the point of interchange with some other road haul carrier and deliver the other car from that yard with the switch engine to the industry to which destined, the industrial movement as I repeatedly said, would be the more costly on the average. I did not say that the movement from the first classification yard in each instance to the industry would be more costly to the carrier than taking the other car from the classification yard and delivering to the point of interchange with the line haul carrier. At least I did not intend to say that. (Tr. 3227.) But I mean to say that the average cost of delivering the car from the classification yard number 1 into which we have taken the 2 cars, to the industry is on the average more costly than taking the car from the classification yard number 1 to the point of interchange in the district. This study is all embodied in the others; the combination of elements are in-

cluded in an exhibit in the previous hearing, but I could not tell you the average difference. (Tr. 3227-3228.)

Cross-examination.

By Mr. Tholin:

In the exhibits introduced in this case, we have shown the cost of handling a car coming in or going out in road haul traffic for comparison only to the extent that we are talking now as to comparable services and the classification of the car in the classification yard that classified the car in the road haul train, would also classify that car for further movement in industrial service. I mean that in showing certain unit cost for instance in the classification or transfer, or interchange, or industrial switching, which unit cost [fol. 1415] we have applied to one car, as well as to another, if the two happen to move in the same place, all you could figure is the average. (Tr. 3228-3229.) We have included both kinds of traffic in working out this unit cost. I think the number, the particular transfer moves interchange moves and industrial switch moves charged to this intradistrict traffic are all embodied in that great big exhibit; (Tr. 3229) but we have not shown anywhere in the record what the combination of costs are that pertain to road haul traffic because that traffic is not involved in the cost study.

Mr. Tholin: Have you made any other study on which you base the statement that one is more expensive than the other, combining elements of cost so as to arrive at total cost for road haul car compared with intradistrict car? Have you made such a study?

The Witness (continuing): I do not need to make a study.

Mr. Tholin: You know without making a study? On what basis do you know this? (Tr. 3229.)

The Witness (continuing): I know from 16 years and 200 cost studies that industrial service is more costly than any of the elements of service in the yard. We do not follow the road haul car because it was not involved. These gentlemen are trying to bring in a comparisan between a car that had received or would receive road haul movement, with a district car and I thought I stated the fundamental theory as I understood it. I think early in my

testimony I said you could pick out hundreds of cases in this district where the combination of elements would make it more costly for the road haul car than the industrial car but you would not be comparing like with like if you did [fol. 1416] so. (Tr. 3230-3231.)

Examiner Faul: I think the record is clear as to the difference.

Recross-examination.

By Mr. Hufsmith:

If you accounted for the difference between the average industrial move as against the average interchange move, I do not think you would have comparability of the two. (Tr. 3231.) I do not understand what you mean by accounted for. We worked the cost of these different elements to determine what the average cost in the district for the carriers involved was from industry to industry on 26,000 cars and our objective was to determine that cost on district traffic; and we did that by giving to each car the exact units of service that applied to it, which included 2 industrial moves if two industries were involved and have shown cost of moving from an industry to an industry and added both in. (Tr. 3232-3233.)

I did not say the movements from industry to industry and from industry out in line haul service were always comparable. I said you could pick out anyone you wanted to. (Tr. 3233.)

Cross-examination.

By Mr. Cardy:

In the trucking study described at St. Louis and East St. Louis, there was no stone or coal transferred. It was all merchandise. I do not know whether or not there is a large volume of stone trucked into St. Louis. We did not make a study of that at all. I have no knowledge about trucking stone. (Tr. 3233.)

Recross-examination.

By Mr. Tholin:

I understand there are some industries that own their own industry tracks in the Chicago Switching District.

[fol. 1417] Mr. Tholin: If there are some industries that own their own tracks in the Chicago Switching District, as I believe the record clearly shows, didn't you make any study of the cost that should be applied in connection with switching on those tracks compared with switching on the tracks owned by the carriers?

Mr. Davis: I object to that. That is not involved in this case.

Examiner Faul: The witness may answer.

The Witness (continuing): As I see it, I never could see the difference between taking total cost of maintaining company owned tracks and spread over the engine hours including the time the engine was on the tracks owned by the industry or undertaking to refine that which would only have the effect of increasing the engine hour costs when it was not on those tracks. As to making a study of the effect of the ownership of tracks in making comparison between cost of industrial switching with cost of interchange that is all embodied in Exhibit 83, the whole discussion is the position of the shippers and the position of the carriers on that point. (Tr. 3234-3235.) In stating that cost of industrial switching is more expensive than interchange switching, the only consideration given to the fact that in some of the industries do not own the tracks was to the extent that that matter was discussed in the joint conference. (Tr. 3235.)

Mr. Tholin: And the same would apply in connection with not only ownership of the tracks as involved in the operating ratio but in connection with the maintenance of those tracks as involved in the operating expense of the railroad: you have given no consideration to either factor. (Tr. 3235.)

The Witness (continuing): Except to the extent that they were considered in the joint conference and are embodied in Exhibit 83. (Tr. 3236.) I do not know whether the op- [fol. 1418] erating expense relating to trucking costs in St. Louis are more or less at the present time than in 1929.

Cross-examination.

By Mr. J. S. Brown:

Mr. Brown: Mr. Saur did you learn in conducting that cost study in 1927 that grain cars to or from elevators are

spotted by elevator power and not by the locomotive power of the carriers?

Mr. Davis: I object to that. It is not cross-examination.

Mr. Brown: I am asking if he learned that.

Mr. Davis: Well, I object to it. It is not cross-examination.

Mr. Brown: If it is the proper kind of study, he would have found it out.

Mr. Davis: Let it stand that way.

Mr. Brown: I did not hear you.

Mr. Davis: I said, let it stand that way.

Mr. Brown: If he does not want to answer, all right. I wanted it stated as a fact.

There is no spotting at the elevators of grain by the railroads. You can put on a man to deny that if you want to. (Tr. 3236.)

Recross-examination.

By Mr. Walter:

Road haul service was not involved in the study and was given no consideration except to the extent that road haul cars were moved at the same time as district cars and are included in the average cost, but there was no showing as to road haul car costs nor as to the relative number of average transfers and various kinds of services performed on the road haul. (Tr. 3237.) But I do not remember any [fol. 1419] exhibit showing computation of the average number of transfers or classifications on the intradistrict traffic divided up as between 1 line, 2 line and 3 line. (Tr. 3238.)

G. F. Vivian, recalled as a witness, testified as follows:

Direct examination.

By Mr. Davis:

In addition to the two copies of trucking contracts made by the Northwestern Railway and the copies of contracts between the Chicago, Milwaukee & St. Paul and the Langdon people which we have furnished to Mr. Walter, I have

2 more, one with the Chicago Terminals Co., which is a trucking company and one with Nielson Brothers, a trucking concern. (Tr. 3239.) Nielson Brothers do the trucking and the pay is through the Chicago Terminal Company and these were for deliveries at Healy. The different rates for different distances in the contract are: for 1 mile 5¢; 10,000 pounds or less, minimum 6,000 pounds: 2½ miles 5½¢; 4 miles 6¢; 5½ miles 7¢; 7 miles 8¢; 10 miles 11¢; 15 miles 13¢. For loads of 20,000 pounds and over, 1 mile 4¢; 2 miles 5¢; 4 miles 5½¢; 5½ miles 6¢; 7 miles 7¢; 10 miles 8¢; 15 miles 10¢; all these rates being in cents per hundred pounds. (Tr. 3240.)

Another contract is that with the Arthur Dixon Co., for trucking between Cortland Street Station and Union Street, both on the Chicago, Milwaukee & St. Paul. (Tr. 3241.) I gave the distance from Western Avenue to Union Street Station as 1.75 miles, which should be 3.25 miles.

The rates in the contract now referred to are for 10,000 pounds or less, minimum 6,000 pounds, 1 mile 5¢; 2½ miles 5½¢; 4 miles 6¢; 5½ miles 7¢; 7 miles 8¢; 10 miles 11¢; 15 miles 13¢. For 20,000 pounds and over for 1 mile 4¢; 2½ [fol. 1420] miles 5¢; 4 miles 5½¢; 5½ miles, 6¢; 7 miles 7¢; 10 miles 8¢; 15 miles 10¢.

This morning I stated the mileage from Cortland Street to Union Street is 2½ miles. This mileage is in dispute. The trucking company bills the carrier on the 4-mile zone, while the carrier contends that the mileage is slightly under 2½ miles, which should put it in the 2½-mile zone. There is a difference of ½ cent per hundred pounds in the rate. The rate for 2½ miles is 5 cents; 4 miles is 6 cents. (Tr. 3241.)

Cross-examination.

By Mr. Walter:

All these contracts cover what is commonly called trap car freight, package car less than carload freight from station to station in varying loads, as I have stated; and for the compensation stated I presume the company not only handles the freight from warehouse to warehouse, but also assumes all liability for damage to persons or property connected with the traffic, for which any liability is incurred prior to the time they have yielded up the goods in

good condition. I have not read that contract, but I think that is so. From my general knowledge of the trucking rates that have come before me in Chicago, I think these various rates I have stated fairly state the cost of trucking service which is competing with the rail carriers in the handling of intradistrict carload freight. (Tr. 3242-3243.) I think the carriers are competing with trucks for the handling of intradistrict carload freight as they are all over the United States, and I think we are meeting truck prices in the Chicago district, but I do not know any more about it than what has been embraced in the testimony I have heretofore given. (Tr. 3243.)

Mr. Davis: Mr. Examiner, before we close the case—that [fol. 1421] is all the evidence I have, but I understand and I think I should make this statement of record for Mr. Brown of the Board of Trade, who does not seem to be here; anyhow, I will make the statement and he can be advised of it later. (Tr. 3243-3244.) Mr. Vivian gave the movement of the 62 cars he asked for between the two elevators, and I am advised by the Rock Island during the lunch period that they contend or consider that that movement is an intraplant movement, so I thought I should make that statement on the record. Mr. Vivian has given the movement and the facts. (Tr. 3244.)

Mr. Walter was furnished a list of industries that were marked by keys in Exhibit No. 110. I do not know whether the examiners were furnished with a copy of that or not, but by ruling of the examiners we were to give Mr. Walter that. We consider that without an order from the Commission to furnish it, it would be a violation of Section 15. Mr. Walter now asks if he can have that marked as an exhibit in the case. If there is no objection on the part of the examiners it can be so marked. (Tr. 3244.)

Examiner Faul: All right; it will be received as Exhibit 110-A.

(Said document was thereupon received in evidence, being marked "Exhibit No. A-110, Witness Vivian.") (Tr. 3246.)

Mr. Davis: Now that closes our rebuttal, and I suppose we should fix the time for briefs.

Examiner Faul: This will be a proposed report case. Briefs will be due from all parties July 8, 1932, and the

hearing in Docket No. 19610 is closed at 2:10 P. M., May 10, 1932. (Tr. 3246-3247.)

[fol. 1422] At a hearing in the above entitled consolidated proceeding, but on the record of which was made in Acme Steel Company, et al., Complainants, v. Atchison, Topeka & Santa Fe Railroad Company, et al., Docket No. 24950, before Examiners H. C. Faul and W. B. Wilbur of the Interstate Commerce Commission, at Chicago, Illinois, on May 10, 1932, the witnesses hereinafter named were called and presented in behalf of complainants and other parties to the proceeding, in the order in which their names appear, and under oath testified in substance as herein set out. (Tr. 1-7.)

The Chicago Stone Producers Association, the Chicago Association of Commerce, the Public Service Commission of Indiana, Illinois Commerce Commission, and the Chicago Gravel Company intervened in said proceeding (Tr. 7-8), but with the understanding that their petitions of intervention should not broaden the issues. (Tr. 9.)

F. S. Holland called as a witness in behalf of complainants.

Direct examination.

By Mr. Walter:

I am assistant traffic manager of the Standard Oil Company of Indiana.

Q. State your experience in railroad matters and transportation matters.

Mr. Davis: Unless you want to, we waive his qualifications.

[fol. 1423] Mr. Walter: All right.

The Witness (continuing): I am familiar with the issues involved in this case and have prepared a statement embodying the facts to submit to the Commission. Our refinery at Whiting, Indiana, supplies our own warehouses, bulk plants and customers in the Chicago district (Tr. 13), the warehouses and bulk plants so supplied being shown in

my Ex. No. 1. (Said exhibit offered and received in evidence and marked "Comp. Ex. X-1, Witness Holland.") The figures enclosed by circles represent the index numbers referred to at the left of the map, and under the heading "Stations" are names of bulk plants and warehouses indicated by the circles. (Tr. 13.) At the hearing of the original case in 1928 the testimony of a representative of a refinery located in the Calumet district, where Whiting, Indiana, is located, would cover other refining plants generally, including the Standard Oil Company of Indiana, Shell Petroleum Corporation, and Sinclair Refining Company, and now the Empire Oil & Refining Company, which has been located in the district since the original hearing. On investigation we find we shipped from Whiting, Indiana, to the Chicago district in September, 1926, 1,787 cars; in September, 1931, 1,681 cars, and in March, 1932, 1,447 cars. The volume of traffic today is considerably less than in September, 1926, used as the basis for the cost study, the lower volume being partly due to a substantial movement by truck. (Tr. 14.) We also find that during the test period week from August 4 to 10, 1927, we received and forwarded, via Baltimore & Ohio Chicago Terminal, 264 cars; via the Belt Railroad, 13 cars; via Chicago, Milwaukee, St. Paul & Pacific, 87 cars; and via Indiana Harbor Belt 91 cars. Our weekly average for the year 1927 via the Baltimore & Ohio was 264 cars; via the Belt Railway of Chicago 19 cars; via Chicago, Milwaukee, St. Paul & Pacific 73 cars, and via Indiana Harbor Belt 71 cars. [fol. 1424] (Tr. 14-15.) The weekly average the first three months of 1932 via Baltimore & Ohio Chicago Terminal was 165 cars; via Belt Railroad 12 cars; via Chicago, Milwaukee, St. Paul & Pacific 72 cars; and via Indiana Harbor Belt 132 cars. (Tr. 15.) The 132 cars via Indiana Harbor Belt was an increase due to heavy movement from our refinery to a large plant in the Calumet district, something over 500 cars, during that period, being an intrastate one-line haul movement for a comparative short distance. (Tr. 15.) During the test period on the Chicago, Burlington & Quincy from June 15 to 21, 1927, we received and shipped via that railroad 2 cars; via Chicago & North Western 11 cars; our weekly average for 1927 via the Burlington was a little more than 2 cars; via the Chicago & North Western 12 cars. The weekly average for the first three months of

1932 via the Chicago, Burlington & Quincy was 4 cars, and via Chicago & Northwestern 11 cars. For the test period August 8 to 14, 1927, via the Pennsylvania, 25 cars, with weekly average for the year 37 cars. (Tr. 15.) Weekly average for the first three months of 1932 via the Pennsylvania was 36 cars. (Tr. 15.) For the test period August 19 to 25, 1927, via the Chicago, Rock Island & Pacific we handled 3 cars; via Chicago Short Line no cars; via Chicago, West Pullman & Southern 13 cars; via Chicago & Illinois Western no cars; via Illinois Central 5 cars; via Illinois Northern 6 cars; via Pullman Railroad 3 cars; as against a weekly average for the year 1927, via Chicago, Rock Island & Pacific for 17 cars; via Chicago Short Line of 2 cars; via Chicago, West Pullman & Southern of 15 cars; via Chicago & Illinois Western of 1 car; via Illinois Central of 4 cars; via Illinois Northern of 5 cars; and via Pullman Railroad of 4 cars. The weekly average for the first three months of 1932 via Chicago, Rock Island & Pacific [fol. 1425] was 2 cars; via Short Line less than 1; via Chicago, West Pullman & Southern no cars; via Chicago & Illinois Western 12 cars; via Illinois Central 8 cars; via Illinois Northern less than 1; and via Pullman Railroad 2 cars. The average weekly intrastate shipments for the year 1927 was 29 cars as against average per week for the first three months of 1932 of 67 cars. The average interstate movement for 1927 was 370 cars as against average per week the first three months of 1932 of 290 cars, being based on 1927 shipments divided between one- and two-line hauls. Intrastate one-line movement was 98.8 per cent; two-line 1.2 per cent; interstate movement one-line was 42 per cent; two-line 57 per cent; (Tr. 16) three-line 1 per cent. Slightly more than 7 per cent of shipments from Whiting to Chicago district moved in railroad equipment, 93 per cent moving in privately owned tank cars.

The Commission in its decision 177 I. C. —, 669, Item 2, observed that use of private equipment should be compensated for by rental charges instead of reductions in switching rates, and on page 713 said that in instances where necessary to utilize private equipment, shippers should be compensated for the use thereof by specific rental charges, and not through differentials in freight rates. (Tr. 17.) Although repeated requests to the carriers as to what action they would take with respect to the Commission's

decision have been made, we have received no answer and we believe that on all business which we have moved in tank cars interstate to the Chicago district we have been paying an improper rate and should be entitled to reparation. On all 1931 shipments to the Chicago district our average cost for use of tank cars was $5.10 per car. (Tr. 17.) We own and maintain approximately 45 miles of track at our Whiting refinery, and for the years 1926, 1927, 1930 and 1931 our yearly average maintenance expendi- [fol. 1426] ture was $82,659.09, or $1,921.00 per mile per year. (Tr. 18.) The map, Ex. 1, also shows the railroads serving the plant, the number of lines used from Whiting to destinations, the number of tank cars of white products, which include gasoline, kerosene or furnace oil, moving during the year 1931 from Whiting to destinations shown. (Tr. 18.) It was stated at the original hearing that if rates originally published by the carriers became effective it would force our company to move considerable business by trucks. (Tr. 18.) Stations 1 to 8, Englewood, Grand Crossing, 17th and Mechanic Street, South Chicago, Washington Heights, 47th and Western, West Pullman, and Hammond, the number of cars shown——

Mr. Davis: I object to any evidence in regard to handling shipments by truck, and cite as authority for that several cases so that I can have my record complete. In Southern Classification Rate Investigation 100, I. C. C. 513, the Commission said in substance that in fixing the maximum reasonable rates, competition is not a factor which it could take into consideration; that though carriers might within limits make low rates to meet competition, the Commission was without power to compel the carriers to do so.

Examiner Faul: The objection will be noted.

Mr. Davis: I shall object to having any part of it in regard to trucking in this case taken into the other case under the guise of the stipulation that I entered into.

Mr. Walter: May it be understood that the objection will run to all similar testimony on succeeding witnesses, so we won't have to interrupt all the time?

Mr. Davis: That would suit me very nicely. (Tr. 19-20.)

The Witness (continuing): —to the station index 1 to 8 inclusive the number of cars shown at these stations, 3,907, [fol. 1427] are being or will be hauled by trucks during

1932, that is, if the rates continue in effect as they are today, as such handling is at considerably less cost than under carriers' published rates. At our Englewood station on the New York Central, under truck movement we save $10.16 per car, part of which includes cost of our tank cars used in this business. The total saving to the 8 stations amounts to $36,776.46 per year, or an average of $9.41 per car. From the next 5 stations, index 9 to 13 inclusive, a trucking company has contracted to handle the business at a figure less than the railroads' charges, but to these stations we have not yet moved any large volume. (Tr. 20.)

If a compromise with carriers had been effected truck movement would be avoided, but because to handle by trucks would require those companies to expend additional money, we feel it necessary to make a contract for at least one year. On the basis of 5,229 cars to stations index 1 to 12 inclusive, we could handle approximately one-half the total movement by truck on the present contract. (Tr. 21.) At our plant index 14, located in northern part of map, known as Cortlandt Street, on Chicago, Milwaukee, St. Paul & Pacific Railroad, on the north branch of Chicago River and accessible to water transportation, during the 1920 railroad strike we handled our business by placing one of our boats loaded with gasoline at this plant, which we distributed throughout the city by truck. (Tr. 21.) Steamship lines solicit business from our Whiting refinery for delivery on the lake or Chicago River in boats smaller than we operate on the Great Lakes. (Tr. 21.) In my judgment we can handle petroleum products by water much less than at present rail rates. (Tr. 22.) While trucking companies solicit package business out of our Whiting plant, and at present are getting but a small part of it because of our limited platform facilities at [fol. 1428] Whiting, we are making a survey of this phase of the trucking situation though not particularly with reference to Chicago switching, but as a general one covering all destinations. At present we handle some package goods by truck from Whiting to Indianapolis, Terre Haute, Detroit, etc., saving considerable as against the rail rate. (Tr. 22.) As I understand, all witnesses from the operating departments of the carriers have said that distance would not be given material weight in fixing switching

rates in the Chicago district. With this in mind, index 8 on the map represents our Hammond, Indiana, plant, but a short distance south of Whiting refinery. Indiana Harbor Belt serves the Hammond plant and also the Whiting refinery. The intrastate rate is 2½ cents per hundred, modified by emergency charge in Docket 103, of 10 per cent, making 2¾ cents. Index 1, our Englewood plant in Illinois, is but slightly more distant from Whiting than Hammond, but the interstate rate fixed by the Commission for this single-line haul is 3 cents per hundred. Englewood and our Whiting refinery are served by the New York Central. We own and maintain the tracks at Whiting, Hammond and Englewood. (Tr. 23.) In this case the Commission apparently holds the rate between the industries on the Chicago Junction to be reasonable. I do not know what the record shows as to track ownership at those industries, but keeping in mind the facts I have stated and the fact that the Chicago Junction Railroad, the Indiana Harbor Railroad, and the New York Central are under the control of one system, then to my mind our rates are unreasonably high. (Tr. 23-24.)

Mr. Walter: That is handling by truck?

A. Didn't I say by truck?

Q. Yes.

A. I should have put in there, "by truck," and consid- [fol. 1429] erable saving under the railroad. We handle all of our gasoline, kerosene and furnace oil by truck from Wood River to the St. Louis stations, about thirty-odd miles, and over a toll bridge at that. (Tr. 24.)

Cross examination by Mr. Davis, representing respondents:

The 132 cars moving via Indiana Harbor Belt shown at the top of page 2 moved via single-line 3 or 4 miles. (Tr. 25.) We have had this movement off and on. Shipments originated at Whiting and the movement is intrastate in Indiana. The difference between the state rate and interstate rate had nothing to do with this movement, but we may have to make it by pipe line and possibly will if intrastate rates go up, as we have a line from our refinery today to some of the plants in that district. (Tr. 25.) We have

pipe lines from the mid-continent fields. Pipe lines reach our plants at Whiting and at Wood River, but we do not own them all. I haven't the different figures, but we have handled interplant and in-and-out-of plant movement loaded and empty at Whiting over our tracks as high as 700 cars per day. The years vary. Right now we are not running anything like that. (Tr. 26.) We receive an allowance of $1.75 per car for this handling in-and-out-of the plant, but not interplant. This is being reduced to $1.70, based on recent wage reductions, etc. (Tr. 27.) This allowance would not apply to all of the 700 cars handled in a day. We get $1.75 allowance for cars that carriers deliver at our gate which we spot. This is absolute cost, but does not include track expense or overhead. It is the bare cost of the switching if furnished by the railroad. (Tr. 28.) The Shell and Sinclair companies are located at Whiting on the Indiana side. The Empire Oil & Refining Company is at Hammond. One or two small concerns are located on the [fol. 1430] Illinois side. There are gas pipe lines to the Illinois side. (Tr. 28.) Prior to December 10, 1931, our rates to the district were 2½ cents per single-line, 2½ cents for two-line and 3 cents for three-line hauls, minimum weight 60,000 pounds. My figures are based on 10,000-gallon cars, which would mean 66,000 pounds per car. We contend that rates established December 10, 1931, at the minimum weights, of 3 cents, 3½ cents and 4 cents per 100, are unreasonable. We propose a 2½-cent rate for single-line as a reasonable rate, and for a two-line haul possibly 3 cents might be reasonable, and a three- or more line haul should be a little higher, and we propose 3½ cents. (Tr. 29.) There is no objection to the 60,000-pound minimum as applied to tank cars, but 60,000 pounds can be loaded only in a 50-foot box car. If you tier the barrels it would break every car. Oil minimum weight in box cars is 30,000 pounds. Since the increase in rates December 10, 1931, we have demanded larger box car equipment and have generally paid a premium on that. We favor the old commodity basis of rates, but if it is too high with railroad handling we could not say we would favor the commodity basis. We pay more on the business than is averaged for the sale. We are standing part of the slack like heavy-loading commodities pay, while the light-loading ones get the benefit. (Tr. 30.) The three photographs here show handling of gasoline by truck and trailer, with a load running from 5300 to 5800

gallons, about the size of a small tank car. Gasoline weighs 6.6 pounds per gallon. (Tr. 31.) I can't give the speed of the trucks. We have the volume and trucks are operating every day, and we have no trouble in making deliveries. From our standpoint it is less trouble than handling by railroad.

Q. Nevertheless you are reluctant to make an investment for truck facilities required to handle your output, but if [fol. 1431] the increase in rates interstate continues and should be applied on intrastate traffic, you certainly would do it?

Mr. Davis: Objected to as leading, and also as calling for a conclusion.

The Witness (continuing): The carriers understand our position clearly. Rail rates to meet our truck movement from Whiting to Elgin, Aurora, Joliet, Rockford and Freeport have been made, and under those rates that business returned to the railroads. We have given railroads the business wherever they have met truck competition. This applies to Green Bay, and on the first of the month we restored the business at Muskegon. The railroads have not seen their way to meet the truck competition in the Detroit territory. (Tr. 32.) All our interstate rates to the Chicago district were increased December 10, 1931, except to Rogers Park, Jefferson Park and Des Plaines. These stations were reduced because if not we would have moved the business by truck. Those points are in the so-alled outer zone. (Tr. 33.) The rate from Whiting to Aurora and Elgin was around 11 cents, reduced to about 7 cents. The trucking rate would still be less. The reduced rates to Rogers Park, Jefferson Park and Des Plaines came about through the interstate basis of 3 cents, 3½ cents and 4 cents, in our case 3½ cents. (Tr. 34.) We have had reduction in truck rates from Whiting to Hammond and Goshen, Elkhart, and South Bend. Outside the switching district we have rates all very much less than the rail rates, but have not been using them to any extent. (Tr. 34.) In referring to present rates I have referred to the interstate basis of switching rates. If we are to have one commodity rate for the district, then both the state and interstate rate should be the same. If we are not to have one commodity rate, then you must take a zone or some other method. I am not talking about any other commodity. (Tr. 35.)

[fol. 1432] W. J. Hammond, called by complainants, duly sworn and testified as follows:

Direct examination by Mr. Walter for complainants:

I am traffic manager of the Inland Steel Company and have been for 14 years.

Mr. Davis: We will waive his qualifications.

The Witness (continuing): The Inland Steel Company produces iron and steel principally, with some by-products of coke ovens. The iron is distributed in the form of pig iron and steel in all kinds of finished products except wire nails, tin plate and pipe. (Tr. 36.) The Inland Steel Company is a Delaware corporation with principal office at Chicago, with plants located at Chicago Heights, Illinois, and Indiana Harbor, Indiana. Our Chicago Heights plant was served only by Chicago Heights Terminal Railroad, which performs practically all switching service for industries at Chicago Heights. The Chicago Heights plant began operation in 1893. (Tr. 36.) It produces angles, bars, agricultural implement shapes, special sections, and fence posts. (Tr. 37.) The Indiana Harbor plant is on Lake Michigan about 4 miles east of Chicago corporate limits, and was the first plant located at Indiana Harbor, which was the first port established in Indiana on the west side of Lake Michigan. The plant was located there upon assurance that Chicago rates would apply from and to all points, including the Chicago district. Since 1902 this plant has grown rapidly and now operates its own blast furnaces, coke ovens, open hearth furnaces, producing the entire list of iron and steel articles excepting wire nails, tin plate and pipe, which are shipped principally to the Chicago switching district and points in the South, Southwest and West. This plant is served by the Indiana Harbor Belt and New York Central Railroads, the former handling all shipments to and from interchange tracks at the plant. [fol. 1433] Steel production requires large quantities of raw materials, such as iron ore, coal, coke, oil, acid, limestone, scrap iron, brick, machinery, and various alloys, on which railroads receive revenue except as to limestone. A large portion of oil, scrap iron, acid, brick, machinery, etc., originates in Chicago district, which are sold on basis reflecting transportation cost in the purchase price, although

in some instances switching charges are paid by shippers and in others by consumers. (Tr. 37-38.)

The figures as to car movement and revenues shown at the hearing in May, 1928, present a situation entirely different than the one at present as to volume and revenue. (Tr. 38.) Inbound switching records for September, 1926, are not available. Outbound that month we shipped 1044 cars in one-, two- and three-line movements, 82,861 average weight, and average revenue $20.34 per car. In September, 1931, 528 cars were shipped in one-, two- and three-line movements, average weight 82,426 pounds, average revenue $20.76 per car. We shipped 461 cars in March, 1932, in one-, two- and three-line hauls, average weight 82,213 pounds and average revenue $27.88 per car. In the first quarter of 1927 total switching movements, state and interstate, for one-, two- and three-line hauls was 6,806 cars, average weight 87,061 pounds, total revenue $147,036.89; average revenue $21.60 per car, as compared with first quarter of 1932 of 2,728 cars, average weight 86,773 pounds, total revenue $75,458.64, average revenue $27.66 per car. (Tr. 38-39.) On November 1, 1930, the Indiana Harbor Belt discontinued spotting service, since which we have done that under an allowance of $1.85 per loaded car, resulting from a cost study by the accounting committee on terminal allowances. (Tr. 39.)

The cost study in the test week August 4 to 10, 1927, on the Indiana Harbor Belt in Docket 19610 for spotting serv- [fol. 1434] ice at our plant 1 showed $3.21 and at plant 2 $4.03 cost per loaded car. If we had performed this switching service on 26,604 cars during the year 1927, on our allowance of $1.85 per car, the Indiana Harbor Belt's cost would have been reduced $48,795.76. (Tr. 39.) Applying this comparison to all traffic of the Inland Steel Company in 1927 would show a saving of $143,671.10. The Indiana Harbor Belt, due to reduced business, now uses smaller locomotives in switching to and from the plant of the Inland Steel Company than it used during the cost study test period of August 4 to 10, 1927, thereby reducing to some extent its operating expenses. (Tr. 39.) Cars switched within the Chicago district to or from Inland Steel Company plants are accorded identical service with road-haul cars received from or destined to points beyond the district. The cars move in the same trains between plant and

break-up yards of the Indiana Harbor Belt, and were handled in the same manner during the test-study week of 1927. Iron and steel companies buy proportionately less raw materials today, which is reflected in the unit volume purchased. Where in the past commodities might be purchased in multiples of carloads, a single carload or less than carload will suffice for immediate delivery. These conditions make truck handling admirable. (Tr. 40.)

Mr. Davis: My same objections go to whatever is said about trucking movement or water or any other way than all-rail.

Examiner Faul: It will be noted.

Mr. Walter: As to every witness.

Mr. Davis: Yes.

Examiner Faul: It will be so understood.

The Witness (continuing): Trucking costs may equal or exceed switching costs for carload movement, but the saving results from not purchasing larger quantities of materials in carloads, which go far to offset the payment of [fol. 1435] higher trucking cost. These observations relating to raw materials apply equally to finished products to the Chicago Switching District. A compliance with customers' wishes requires prompt delivery of our products and in many instances can be done only by trucks. (Tr. 41.) Comparison of trucking charges and switching charges is of little value because of the different character of service furnished. In a truck, little or no cost for bracing, blocking or wrapping is required. This represents a substantial cost in rail shipments. (Tr. 41.) Trucks are loaded with cranes in one or two lifts; delivery at destination being made a few hours after leaving the plant; railroad delivery requiring two to four days. Truck movement obviates weighing expenses and miscellaneous switching, moving cars between mills within a plant. No demurrage applies to truck movement. (Tr. 41.) These various items add cost to rail movement and when computed, a comparison of trucking rates with switching rates would require the addition of a substantial amount to the trucking rates to offset these costs in handling rail shipments. (Tr. 42.) Since the previous hearing in this case, the establishment of numerous new and improved highways in and about Chicago has caused their utilization extensively in handling

commodities. At the previous hearing in 1928 there was no truck handling of finished commodities of this company by truck; since December 10, 1931, the higher delivered switching cost on finished products which we bear has compelled the rapid increase in the use of trucks, 5,000,000 pounds having moved in the first three months of 1932 to the Chicago switching district. (Tr. 42.) While desiring to patronize railroads, we are in many instances forced to adopt the more expeditious delivery by truck to properly serve our customers. (Tr. 42.) Our products sold in Chicago switching district, require us to pay cost [fol. 1436] of delivery and any increase in rates must be borne by us. (Tr. 42.) Many industries in the district own or contract for truck use in their plant operations to move material to and from the plants thus reducing operating expenses proportionately to the extent to which full time operations may employ this service thereby materially reducing transportation costs because of fixed overhead charges on the truck. (Tr. 43.) There are but three team track deliveries in the Chicago district, involving a two line haul where combined rail charges from Indiana Harbor to connecting line team track and trucking cost from there to the industry do not exceed actual trucking rates we pay, without considering saving from incidental expenses in preparing car load shipments previously set forth. A substantial saving results from the use of trucks as all Chicago industries do not have private sidings. (Tr. 43.) Building construction steel in the Chicago District moved by truck from the railroad to building site can be moved direct from mills at substantially less cost than via railroads to team tracks with trucking therefrom to building sites. Trucking rates from mill to destination do not exceed trucking rates from team track to destination thereby making the rail haul to team track unnecessary. (Tr. 43.) The use of trucks in and about Chicago is increasing; and customers demanding prompt deliveries, which obviates the carrying of large inventories has rapidly increased truck use. If the interstate rates become applicable to intrastate traffic, this additional burden will further divert much of present rail tonnage to the trucks and give lower earnings to the railroads. (Tr. 44.) At the hearing, May, 1927, Docket 19,610, I introduced Exhibit No. 18, showing range of switching rates between in-

dustries in the Buffalo, Cincinnati, Cleveland, Detroit, Pittsburgh and St. Louis switching districts. The rates in these districts are substantially less than apply in the Chicago district for similar switching service. Due to absence of grades, curves, tunnels and expensive bridges in the [fol. 1437] Chicago district permits maximum train load movement, while in Cincinnati, Pittsburgh, St. Louis, etc., there are heavy grades, tunnels, expensive bridges, indicating costly switching operations at lower rates than apply in the Chicago district in addition to higher maintenance cost. (Tr. 44.) No complaints have been filed, nor have the carriers attempted to increase rates in the other districts mentioned since the hearing of Docket 19,610. These rates, though generally much lower than in the Chicago District seem satisfactory to the railroads. (Tr. 45.) We own and maintain all tracks within the plant enclosures of the Inland Steel Co. For the five year period ending December 31, 1931, the maintenance expense was $171,433.51, or an average of $34,286.72 per year. The Lowrey basis minimum in the Chicago district is 60,000 pounds. Outside competitors selling steel in the district have a minimum of 40,000 pounds. This difference in minimum increases competition by enabling customers to purchase smaller car loads from our competitors. (Tr. 45.) Iron and steel are used in many lines of manufacture and initial switching from steel plant to industries in the Chicago district is not always the final movement, as approximately 65% of these commodities are further manufactured and shipped in road haul movement which produces the principal revenue of the railroads. (Tr. 45-46.) Both shippers and railroads benefit by low shipping rates so that there may be no restriction to development of traffic for subsequent road haul movements. Sympathizing with carriers in their desire for increased revenue, yet the facts stated applying to switching rates conclusively establish that higher rates would not create traffic or revenue but the reverse would be the result. (Tr. 46.) The Commission's decision in Docket 19,610 referred to its decision in Docket 17,000, part 6, Iron and Steel Investigation 155, I. C. C. 517, in which a distance scale applying in official territory [fol. 1438] was established on a large range of iron and steel articles commencing at 6¢ for 5 miles and under. Since the decision in Docket 19,610, the commission has

approved substantial iron and steel rate reductions from those prescribed in Docket 17,000, part 6. It has permitted a scale not in excess of 100 miles, commencing with 3¢ per 100 instead of 6¢ previously prescribed and under the circuity permitted, this 3¢ rate will apply for a 9 mile distance and the 6¢ rate for 43 miles distance on road haul traffic. (Tr. 46-47.) These reductions became effective November 10, 1931 under section 6, Permit 108,766 filed October 1931. The switching rate prescribed in docket 19,610 for single line, 3¢ per 100, minimum 60,000 pounds, or $18.00 per car. The iron and steel rate of 3¢ per 100 in official territory, minimum 40,000 pounds produces $15.00 minimum per car, for road haul traffic without limit as to the number of lines handling the shipment and includes all terminal charges at both ends of the haul. (Tr. 47.) The application of the 100 mile scale in official territory indicates that carriers and the commission recognized its necessity to meet truck competition in road haul service. This competition applies with greater force to switching service, as many commodities previously switched by rail are moving almost exclusively in trucks at present. (Tr. 47.) If the carriers will give the same consideration to truck competition now existing in the Chicago district as they have in many instances where they appeal to the various commissions for rate reduction to meet truck competition, further loss of switching traffic is possible but the contrary will result if intra-state rates are increased to the interstate level. (Tr. 47-48.)

In the last three weeks, one of our largest purchasers of sheet steel advised it would not accept car load deliveries of these sheets because it, like others, has probably 20 trucks under contract appearing daily at the plant. If two [fol. 1439] of these trucks remain idle they pay something less than the daily contract rate. The next day if all the trucks are not required, two may remain in the barn the entire day and all they are required to pay is the actual drivers' wages. To the extent that these trucks can be utilized in full time operation, they instruct us to permit them to come to our plant for their sheet steel. (Tr. 48.) Although trucking is not limited to sheet steel, the carriers would have to make a pretty low rate to meet that competition. In my judgment, they could not make a rate that would do that. These conditions are developing all over

the city. The truck movement of iron and steel from our mill is typical of many other commodities from other plants; and to the extent they get maximum service out of these trucks they are benefitting in both directions. (Tr. 49.) The sheet steel referred to by our customer is one of a general line of iron and steel products and not limited to that particular customer. (Tr. 49.) About two years ago we arranged at all our producing mills for truck entrance and their loading by cranes, which was done at the insistent public demand for trucking deliveries, in one respect. Another was, on a car load order of miscellaneous items it necessitated switching cars from one mill to another to complete the loading. This was before handling by truck was possible but today there are not ten cars a year switched in that manner because different iron and steel commodities are collected from various mills by trucks and moved to the point where the car is loaded all in an eight hour day. Under the old method, two or three days were required. Under the new method car detention and demurrage has disappeared. (Tr. 50.) From the consumer's standpoint, he gets a car load movement at least 24 hours earlier than under the old method of handling. (Tr. 51.) From my experience and observation there is less car detention by consignees than when the cost study [fol. 1440] was conducted. (Tr. 51.) Exhibit No. 110 offered in Docket 19,610 was offered by the Witness Vivian. Line 29, Page 1 shows two cars from consignor 1 to consignee 34, routed by the New York Central, Chicago River and Indiana, and Baltimore & Ohio Chicago Terminal, a three line movement, showing rate opposite, 2½¢. The head of the page indicates routing of these cars by industries, shows no lawful intrastate Illinois, 3 line haul rate of 2½¢. (Tr. 52.) The same observation applies to line 70, page 3, from consignor 70 to consignee 1, 14 cars routed by industry lawful rate applicable, 3¢. An undercharge results from that movement. Likewise line 71, the movement from consignor 71 to consignee 12, 5 cars, via Chicago & Northwestern, Chicago River & Indiana, and Pennsylvania, lawful rate, Illinois intrastate, 3¢ per 100. Line 90, from consignor 1 to consignee 2, one car by Indiana Harbor Belt, Chicago & Northwestern and Baltimore & Ohio Chicago Terminal. The rate shown is 2½¢ and the same situation applies there as on previous cars. (Tr. 52.)

Various exceptions to the so called Lowrey basis applies to single line hauls via various routes were established to meet needs of commerce or a particular situation in the territory to which they apply. These excepted rates generally apply higher minima than the Lowrey basis and have been in effect for a great number of years and should be continued in my judgment. The higher the level of rates, the greater necessity there must be for exceptions. (Tr. 53.)

Plant refuse has no value except as waste. There is no district anywhere including a large industrial center in which carriers have not given consideration to moving refuse of no commercial value at rates substantially less than the general level of switching rates. There is no rea- [fol. 1441] son why this practice applied in other territories should be denied to Chicago territory. It is necessary, if manufacturers are to continue. It applies universally to every manufacturer in this territory because he must get rid of refuse and he cannot pay regular switching rates on the commodities. I refer to single line exceptions where they are intrastate and should so apply. (Tr. 53.) I do not know of many applying interstate. These exceptions are generally limited to much less distances than usual switching rates. They were made to move certain commodities between certain industries at a revenue greater than the regular switching rate, though the rate is lower; the haul less, but with the heavier load. (Tr. 54.) There were perhaps, a few of these exceptions effective on interstate movements prior to December 10. We perhaps could use it on scrap iron in the Calumet district, minimum 100,000 pounds. (Tr. 54.) All cars received under load, we load outbound, if suitable. In such instances, no railroad classification is required or made. (Tr. 54.) They are inspected at our plant and if mechanically satisfactory for rail movement, they are used for outbound movement. (Tr. 54-55.)

Q. Now with reference to these exceptions can you state whether or not in your contact with various traffic officers, prior to the commission's decision in the switching case, that they were giving consideration to these matters with an open mind and that since that decision they have fallen back on the decision, declining to take any action looking to any change or modification.

Mr. Davis: I object to that. That does not decide any issue in this case.

Examiner Fall: Proceed.

Witness: What is the question, please?

[fol. 1442] Examiner Fall: Read the question please.

(This was done by the reporter.)

Witness: That is correct.

Mr. Davis: Don't answer before he has a chance to rule. I move the answer be stricken and also the statement made by Mr. Walter on the record, which was in answer to nothing.

Examiner Fall: The witness answered. (Tr. 56.)

Mr. Davis: What is the ruling.

Examiner Fall: The witness answered. The rates are in effect. I do not know that it makes any difference as to what the witness thinks the attitude of the carriers has been since the decision. The decision speaks for itself.

Mr. Davis: I move that the question and answer and also that Mr. Walter's free statement be stricken, as it has no bearing on any issue in this proceeding. (Tr. 57.)

Examiner Fall: I do not believe it will help us in reaching a proper conclusion in this case.

Mr. Davis: I take it that my motion is granted.

Witness (continuing): Effective November 10, 1931, I stated that carriers published a road haul rate of 6¢ for 43 miles on iron and steel. It is based on the circuitous route and includes terminal service any number at both ends of the haul with a 40,000 pound minimum between points in official territory.

This rate would produce $24.00 on the minimum. (Tr 58). At the 3¢ interstate rate, single line in the district, the revenue would be $18.00 on the minimum weight per car. (Tr. 59.) The 6¢ load haul rate applies for joint haul lines. The interstate two line haul rate at the minimum in the district produces $21.00 per car. It may be said that in the commission's decision, Docket 17,000, part 6, average loadings of iron and steel often exceeded 100,000 [fol. 1443] pounds, but the carriers are willing to handle a car of 40,000 pounds at the rate designated. And while the average loading exceeds and did at the time of the hearing in that case greatly exceed what it is today, the carriers nevertheless, will haul these cars at the minimum

weight of 40,000 pounds. Prior to the publication of the 6¢ road haul rate, I attended a joint conference in Pittsburgh with carriers and shippers while it was under consideration. From the various remarks of the various interests, I concluded it was published to meet truck competition solely. (Tr. 59-60.) At the time of the original case, our average loading within the Chicago switching district was around 89,000 pounds per car at present around 82,000 pounds. We are not asking a reduction in the car load minimum of 60,000 pounds though the unit of purchase of all commodities is substantially less than several years ago. Our customers have needs for lighter loads but we prefer to retain the 60,000 pound minimum to give the carriers all possible revenue, if the rates are in line with what we believe will move the traffic. (Tr. 60.) The analysis of our traffic indicates that 2½¢ single line is as high as that traffic will bear, with 3¢ for two lines and 3½¢ for three lines. If those are exceeded, it will divert traffic to competing forms of transportation. (Tr. 60-61.) Subject to the exceptions that exist today, those rates should apply for all commodities. Other than the exceptions applying to refuse material, they were established as commercial necessities many years ago and if those conditions exist today, they ought to be continued. If such conditions do not exist, they should be cancelled and the excepted commodities put on the Lowrey basis. (Tr. 61.) Each exception should primarily be considered by the carrier with its [fol. 1444] interested shippers. It could be done in a few minutes. The Lowrey basis never applied to single line rates. It applied to two or more lines and the exceptions were made by individual lines to meet circumstances and conditions confronting them. They applied in a limited area and if the necessity originally requiring their establishment exists today, they should be continued for single line hauls. Grain was never on the Lowrey basis. (Tr. 62.) We have a plant at Chicago Heights and our proposal of 2½¢, 3¢ and 3½¢ would apply likewise from Chicago Heights to points within the district; the same basis of rates that applies within the district. (Tr. 62-63.)

Examiner Fall: I want to find out from Mr. Hammond why he considers we should have the same rates between Chicago Heights and the district if the hauls from Chicago Heights are considerably longer.

The Witness (continuing): That was gone into quite thoroughly in the original case. Chicago Heights has always had Chicago rates or lower, established for competitive reasons. However, the switching service was defined in the original case and conditions existing there are the same for that movement as within the district. The movement is comparable with the district movement all the way through. We do not propose to change the relationship and the carriers have made no proposal to change that relationship.

Cross-examination.

By Mr. Davis:

Within the Chicago district, the all commodity basis should apply the same on state as on intrastate movement within the district. (Tr. 64-65.) Our car loading in September, 1926 average, 82,861 pounds per car; September, 1931, 82,426 pounds per car, and in 1932, 82,213 pounds per car. Our loads have declined right along because of the lesser unit purchase by users. The 2,728 cars moving [fol. 1445] in 1932 shows average loading of 86,773 pounds per car. (Tr. 65.) There are quite a few other steel plants located in the vicinity of ours in the district. The Illinois Steel Company has plants at South Chicago and Gary. We are in Indiana. The South Chicago plant of the Illinois Steel Company is in Illinois and we are in Illinois, at Chicago Heights. We make nothing at Chicago Heights that we make at Indiana Harbor. The Illinois Steel Company make at South Chicago and Gary the same products that we make at Indiana Harbor. (Tr. 66.) Using a circuitous route from the extreme East end to the extreme Northwest end of the district makes a distance of about 50 miles, for which the 3¢ interstate single line rate would apply. A movement over that road would involve two terminals, one at the beginning and one at the end. I would only guess as to whether prior to December 10, 1931, we had shipments with a plus charge over the Chicago rate such as mentioned by Mr. Holland, in regard to shipments of oil. There were rates there that were plus district rates in certain territories on the North side. These plus charges have been removed. (Tr. 67.)

Examiner Fall: Mr. Hammond, what is the carload minimum you ask in connection with your proposed rates?

The Witness: We were disposed to let the 60,000 pounds remain with rates at 2½¢, 3¢ and 3½¢, which would give the carriers a guaranteed revenue that in view of truck competition should be reasonably attractive to the carriers for switching services. The average loading of our commodities exceeds 60,000 pounds. We intend to load to capacity if permitted to by the size of the order and are not restricted by customers wishes. (Tr. 68.) I said the conditions in the St. Louis, Pittsburgh switching districts were dissimilar to the conditions in the Chicago switching district. I said the rates were lower but that there were [fol. 1446] expensive bridges, tunnels, hills, curves and grades in those other districts, not existing in Chicago; that it tended toward higher switching costs in such other districts. (Tr. 68.) I made no comment on the average hauls within such other districts. The hauls may be longer in the Chicago district but the operations must be less than in the other districts. (Tr. 69.)

G. H. Staat, called by Complainants, was duly sworn and testified.

Direct examination.

By Mr. Walter for Complainants:

My residence is Cleveland, Ohio, and I am familiar with the issues in this case and have prepared a statement of my testimony. (Tr. 70.)

I have been engaged in traffic work 28 years with the old Chicago, Milwaukee & St. Paul, traffic department for nine years and the balance as assistant traffic manager, traffic manager and sales agent of Pickands, Brown & Co., and assistant manager of the Inter-Lake Iron Corporation and since January 1st of this year, have been traffic representative of Pickands, Mather & Co., and traffic manager of Inter-Lake Iron Corporation with offices in Cleveland, Ohio. The Inter-Lake Iron Corporation has a coke oven plant and blast furnace in the Calumet district in South Chicago, Illinois. The coke oven plant is at 112th St. & Torrance Ave., on the Chicago Short Line and the blast furnace is at 108th St., and the Calumet River on the Indiana Harbor Belt and Pennsylvania Railroads. (Tr. 71.)

At the coke oven, we own and maintain tracks used by the Chicago short line and the tracks at the furnace plant owned and maintained by us are served by our own locomotives [fol. 1447] receiving a terminal allowance for that service. (Tr. 71.) From the coke oven plant, we ship coke, tar, light oil, sulphate of ammonia, ammoniacal liquor, while our main receipts are coal. From the furnace plant, shipments are pig iron and slag and receipts are coke, coal, clay, flue dust, ore, limestone and sand. (Tr. 71.)

Coke oven coal comes largely by vessel. We get in three months by vessel a supply that would require a five month period by rail. Our ore moves by vessels, while coal for the furnaces is all rail. At present, we get limestone locally at a rate of 40c per net ton, which would come in by vessel or truck if the proposed interstate basis of 60c for single line hauls was established on Illinois state traffic. (Tr. 72.) We get refuse flue dust from Chicago, West Pullman and Southern Railway, on combination rate of $6.50 per car to that company and $8.10 per car to either the Indiana Harbor Belt or the Pennsylvania railroad, totaling $14.60 per car, which would without question move by truck if the rate of 70c becomes effective per net ton. (Tr. 72.) We have made an exhibit comparing the volume of shipments for September, 1926, with September, 1931, and March, 1932, which we offer as Exhibit No. 2, the same received in evidence, marked "Complainants Exhibit No. 2, Witness Staat." Exhibit is entitled "Shipments by Inter-Lake Iron Corporation of coke, pig-iron, sulphate, ammonia, ammoniacal liquor, tar and light oil in tons, for the period mentioned above, showing one line haul in cars in tons, two lines and three lines respectively." (Tr. 73.)

The exhibit separates these to cover the cost test period in August 1927, for the Baltimore & Ohio, Chicago Terminal, the Belt Railway, Chicago, Milwaukee, St. Paul & Pacific, the Elgin, Joliet & Eastern, the Indiana Harbor Belt and the rest of the roads for other periods contrasting those loads with the average for 1927 with average weekly loading for the first 3 months, 1932.

[fol. 1448] The first three months of 1932, we shipped 28 cars of pig iron weighing 1,342 net tons intrastate and to interstate points, 1 car load, 64 net tons; there being no shipments of coke and other materials for these deliveries within that period (Tr. 73); 306 cars of coke weighing 9,823

tons moved two line intrastate; 21 cars of pig iron, net weight 1,179 tons, 4 cars of other material weight, 124 net tons, or a total of 330 cars, weighing 11,126 tons; while to two line interstate points were moved 52 cars of coke, weighing 1,573 net tons and 5 cars of other material weighing 189 net tons. (Tr. 74.) Our 3 line intra state deliveries for that period were 1,544 cars of coke, weighing 51,109 tons. 3 cars of pig iron weighing 171 net tons, 184 cars of other material, weighing 7,824 net tons, total intrastate 3 line shipments, 1,731 cars weighing 59,104 tons. Interstate 3 line shipments were 143 cars of coke weighing 4,885 net tons.

For the first three months of 1927, our one line intrastate shipments were coke 585 cars, weighing 26,353 net tons; pig iron 91 cars weighing 4,804 net tons, total 676 cars weighing 31,157 net tons; 1 line interstate shipments were, pig iron 57 cars, weighing 3,388 net tons. (Tr. 74.) In this period, 2 line haul intrastate shipments were coke 1,020 cars, weighing 32,108 net tons; pig iron 239 cars net weight 12,299 net tons and other freight 38 cars weighing 1,364 net tons, total, for two line intrastate hauls 1,297 cars, weighing 45,771 net tons. The interstate movements for 2 line hauls were; coke 903 cars, weighing 28,188 net tons and pig iron 2 cars, weighing 92 tons, a total of 905 cars weighing 28,280 tons. During that period, 3 line Illinois intrastate hauls were coke 2,406 cars, weighing 76,611 tons; pig iron 7 cars, weighing 272 tons, other material 272 cars, weighing 12,092 tons or a total of 2,685 cars, weighing 88,975 tons. The interstate three line haul business con- [fol. 1449] sisted of 1 car of coke weighing 31 tons. (Tr. 75.)

These comparisons between the first 3 months of 1927 and of 1932, shows that in the 1932 period there was a very material decrease in 1, 2 and 3 line intrastate hauls and on 1 and 2 line interstate movements, compared with the 1927 period but on 3 line interstate hauls there was an increase in movement. The service on our purely Chicago switching district shipments today is the same as that on shipments to destinations beyond the city of Chicago and the present day service is substantially that performed in prior years. (Tr. 75.)

There is a steady movement of pig iron from all furnaces to the Republic Steel Corporation adjacent on the South to which we now pay 40¢ per gross ton, minimum 100,000 pounds. If this rate is increased at 67.2¢ per gross ton, it is not an idle statement to say that we would either truck it the few blocks, or extend our yard tracks into the Republic plant and move it with our own power, and the Indiana Harbor Belt and Pennsylvania Railroads would lose a revenue of at least $18.00 per car on each car so handled. (Tr. 76.) Using 5 years previous shipments, shows a movement of 52,278 tons or revenue of $20,911.20 for 1927, 73,417 tons for 1928 or revenue of $29,368.80; 1929, 70,579 tons, at 40¢ per ton, revenue $28,231.60; 1930, 36,192 tons or revenue of $14,476.80; 1931, 13,797 tons, revenue $5,518.80. This amount will be lost by the carriers if the rate be increased as proposed. (Tr. 76.)

If the tonnage of 1927, 1928 and 1929 should return, the average revenue for those three years of $26,171.06 would be actually lost to the railroads as against their gain of additional revenue of $17,796.32 per year under the increase proposed. This increase would not come to them if a rate of 67.2¢ per gross ton should be substituted for the present 40¢ rate. (Tr. 77.)

We have a daily movement of Tar to the Barrett Co., on the West side, now moving via Short Line, Belt Railway [fol. 1450] and Chicago & Illinois Western Railway at 2½¢ per 100 pounds but being a 3 line haul, would be advanced to the suggested rate of 4¢ per 100; an increase of 30¢ per ton which I told you, as Mr. Roberts, traffic manager of the Barrett Co., said in the preceding hearing, would with that increase, move in their tank barges. Our daily coke requirements for our blast furnaces formerly moved daily by the Chicago Short Line and Pennsylvania railroads on 50¢ per net ton, 2 line rate, which was too much of a burden for the furnace and for some time we have used trucks and find that for the haul of 4½ to 5 miles per round trip costs not more than 18¢ per net ton. (Tr. 77.) We were trying to help the railroads out in this service by suggesting 30¢ per net ton. The carriers now say they should have 70¢. (Tr. 78.)

In handling materials from ovens to furnaces we first used our own trucks August 16, 1930, to transport coke breeze. This was intermittent until August 27th, when we saw its

advantages, and since it has been carried on regularly. Between August 16, 1930, and April 1, 1932, we have moved 48,830 tons of coke breeze at a cost of 18 cents per net ton. (Tr. 78.) The average load of 12 tons per truck permits movement of approximately 150 tons per day. The round trip haul is 4½ miles. In the 19½ months' period coke breeze production averaged 2452 tons per month, with the heaviest production in December, 1930, at 4120 tons. We did this with our own truck used for general purposes in and out of our plant. It did not handle furnace coke to the furnace plant. (Tr. 78.) On June 16, 1931, we started handling regular furnace coke by truck under contract. Between June 16, 1931, and April 1, 1932, we moved by truck 100,042 tons coke, monthly average 10,530 tons; heaviest loading month 14,153 tons October, 1931. (Tr. 78.) The average truck load was 7½ tons; average daily movement [fol. 1451] approximately 800 tons for 107 truck trips taking 14 to 16 hours per day, with round trip haul of 5 miles at a cost not exceeding 18 cents per net ton. (Tr. 79.) With normal business furnace coke would average 950 tons per day by truck.

If the flue dust rate is increased to 70 cents per ton we could turn this business over to the contract trucks at a rate materially lower than 70 cents a ton. (Tr. 79.) It is about 15 city blocks from the loading point of flue dust to our unloading point, a round trip of slightly less than 4 miles. (Tr. 79.) We operate coke ovens and blast furnace plants at Duluth, Minnesota, Toledo, Ohio, and Erie, Pennsylvania. At Duluth we are served by the Northern Pacific Railway, but have our own plant facilities and receive an allowance. The Wheeling & Lake Erie & Toledo Terminal serve our Toledo plant, at which we own our plant facilities and receive a terminal allowance. At Erie we are served by the Pennsylvania and our own power, but we receive no allowance. (Tr. 80.) In the Duluth switching district it costs but $8.10 to switch a car to the most distant point on the Northern Pacific through a congested terminal that would be very expensive in operation by reason of grades, etc. (Tr. 80.) At Toledo the same thing is more or less true, with charges, pig iron, 25 cents per gross ton, coke 38 cents per net ton; two-lines, 45 cents net or gross, and three-lines 54 cents net or gross. At Erie the separation of Pennsylvania Railroad's lines

east and west obtains, the dividing line being State Street. We are east of State Street. Pig iron rates to all industries on the Pennsylvania, New York Central, the N. K. P., are 25 cents per gross ton, minimum 40 tons; on coke to Pennsylvania Railroad east of State Street, 25 cents per net ton, minimum 30 tons; to Pennsylvania Railroad west of State Street and to New York Central or N. K. P., 38 cents per net ton, minimum 30 tons.

[fol. 1452] The distances in the Toledo district to which the 38 cent per net ton rate applies are as high as 25.9 miles for a one-line haul. (Tr. 82.) A two-line haul for that distance would be 45 cents, a three-line haul 54 cents per gross or net ton, minimum 30 tons. These rates also apply to team track deliveries on all lines. (Tr. 83.) In the Duluth district all rates are zoned and we pay on pig iron and coke 24 cents per net ton, minimum $6.30, and we pay 36 cents per net ton or $6.30, per car minimum. There are varying rates in the different zones, but the highest is 36 cents per net ton, minimum $8.10 per car. (Tr. 83.) Rates of pay, detention expenses and terminal expenses are all more or less uniform in the districts mentioned. Compared with the rates and services in the other switching districts, the proposed rates in Chicago are uniformly too high. (Tr. 84.) At Milwaukee the Chicago & North Western and Chicago, Milwaukee & St. Paul railways, serving as great or greater area than these roads serve in Chicago, publish a switching rate of 2 cents per 100 pounds, minimum 60,000 pounds, between all industries, and 2½ cents, same minimum, between industries from one line to the other. (Tr. 84.)

The Chicago, Milwaukee & St. Paul has 514 industries in their Milwaukee switching district and 539 in Chicago. (Tr. 84.) At Cleveland there are greater terminal operating difficulties than in Chicago. The Cuyahoga River Valley district, the principal manufacturing district in Cleveland, is unlike anything in the Chicago district. The lake front operation in the district is more like that in Chicago, although at Cleveland heavy grades are encountered, with heavy movement from the lake front of coal and ore, which Chicago does not share in comparison. (Tr. 85.) The carriers at Cleveland classify locations as lower flats, central flats, upper flats, lower grade, upper grade, river district, all of which indicates the character

[fol. 1453] of the district as a whole. (Tr. 85.) The New York Central Railroad is the largest switching factor in the city. Its switching district, east and west, covers 20 miles, and 8 miles north and south, with 500 listed industries having private switches. (Tr. 86.) There are probably a hundred more industries not listed.

There are movements for these extreme distances. The New York Central's rate is 38 cents per gross or net ton, minimum 25 net or gross tons; resulting car charge of $9.50 on a 25 net ton basis or on a 25 gross ton basis. In Chicago the charge would be $16.80 for 30 gross tons for a two-line haul. The New York Central's Cleveland two-line haul is 50 cents per net or gross ton as rated, minimum 25 net or gross tons resulting in minimum charges of $12.50 per car. In Chicago the two-line haul rate, minimum 30 net tons, revenue is $15.00 per car; on 30 gross tons the car revenue is $16.80. (Tr. 86.) The Cleveland three-line haul is 50 cents per net or gross ton as rated, plus $3.60 per car, making minimum per car revenue $16.10. The minimum in Chicago for a three-line haul is $18.00 per car on a net ton basis, and $20.16 on a gross ton basis. In Cleveland a three-line haul on a 50 gross ton car of pig iron produces $28.60 per car revenue. In Chicago the revenue would be $33.60. (Tr. 87.)

If the proposed rates in Chicago are established they will exceed the Cleveland switching rates by 22 cents per net ton, or 29.2 cents per gross ton for one-line hauls. For two-line hauls they will exceed the Cleveland rates by 20 cents per net ton and 28.4 cents per gross ton; for three-line hauls they will exceed the Cleveland rates by 15.6 cents per net ton or 25.2 cents per gross ton. (Tr. 87-88.) All figures referred to here are without the addition of the emergency charge.

What I have said with reference to the New York Cen- [fol. 1454] tral at Cleveland applies to all of the other lines operating in the terminal. (Tr. 88.) In some portions of the Cleveland district certain industries require constant use of pusher engines, due to the grades encountered. On the New York Central four of such engines are in daily operation. (Tr. 89.)

Based on the pig iron tonnage from our Federal plant at Chicago from 1927 to 1931, inclusive, the increases proposed would have cost us $24,276.71 per year, while on

coke, using the years 1929, 1930 and 1931, it would mean $72,208.90. (Tr. 89.) These figures do not reflect the increases on outbound tar, light oil, sulphate of ammonia, ammoniacal liquor and others, or on inbound material at the coke plant, or on inbound limestone and other materials to the furnace plant. (Tr. 89.)

Our outbound loading is easily over 60,000 pounds except on coke. In the first three months of 1932, 2,045 cars of coke moved to Chicago district points. Of this number 1,518 cars were over 60,000 pounds and 527 below that figure. (Tr. 90.) Those under 60,000 pounds averaged 28.73 net tons. Those over 60,000 pounds averaged 34.48 net tons. Average loading of 2,045 cars, about 33 net tons. (Tr. 90.)

We have always understood that movements from our Federal furnace plant over the Pennsylvania to its Colehour yard constituted an intrastate movement, and since December 10, 1931, we have not changed in any respect our handling of material from our furnace plant. Whether routed Indiana Harbor Belt or Pennsylvania they have been billed the same. (Tr. 90.) As to industries on the Baltimore & Ohio Chicago Terminal, we have specified on billing, "Via Illinois State Route." (Tr. 91.)

Vivian's Ex. 110, covering alleged routing by industries to avoid interstate rates, filed in Docket 19610, on Illinois State movement, shows on page 2, line 40, shipment, consigned No. 4, Marblehead Lime Company, to our company [fol. 1455] coke oven on the Chicago Short Line. We made no request to the lime company to route this material via any specfic route or junction, as Baltimore & Ohio Chicago Terminal Tariff, I. C. C. No. 397, permitted the handling of this shipment intrastate. (Tr. 91-92.)

On line 55 we are shown as consignor to Illinois Malleable Company of a pig iron shipment. The billing shows no routing, though it apparently moved interstate. (Tr. 92.) The same is true as to line 96 covering the shipment of pig iron via Chicago, West Pullman & Southern. On page 4, line 105, shows a shipment we made to the Elizabeth Street foundry via the Pennsylvania Railroad direct; line 109, a shipment we made to Butler Street foundry, Pennsylvania, 31st Street team track delivery, in the billing of which no routing was indicated. (Tr. 92.)

Mr. Davis: What is the object of the exhibit and testimony of that kind?

Mr. Walter: To show the manner in which the movement is handled at the present time and has been handled since December, 1931. They name the rate. Each one named the rate which is in effect via the intrastate route. (Tr. 93.)

The Witness (continuing): Since December 13th to March 3, 1932, we have moved from our Chicago Heights furnace plant 13 truck loads of pig iron that I presume resulted from the increase in the 40-cent rate. These moved since December 10th, and were all gross tons. (Tr. 94.)

Cross-examination.

By Mr. Davis:

My experience has been in traffic work and in the sales department. I was never in the operating department of the Chicago, Milwaukee & St. Paul, the Interlake Iron Corporation, or Pickands-Mather & Company. I never operated trains for any company in Cleveland. (Tr. 95.) My information was derived from the tariffs and what I have seen in the towns mentioned. We do not designate routing on shipments from our Chicago plant to points within the Chicago district on the Illinois side, or specify state rates. The four instances mentioned in reference to Vivian's Ex. 110 show the only shipments made by us, and routes or rates are not specified. (Tr. 96.) We ship coke to the north side of the Chicago district from our South Deering [fol. 1456] plant. We would route that through Indiana in order to get the interstate rate, but we do not route it interstate. (Tr. 96.) We specify via Short Line, Baltimore & Ohio Chicago Terminal, with delivery through interstate junction. Prior to December 10, 1931, we routed those shipments via the Belt Railway of Chicago as intermediate carrier, which made a considerably shorter route. (Tr. 97.) In referring to shipments on Ex. 110, I did not mean to infer there was no routing. I meant to say there was no route specified on the bill of lading. On these shipments we prepaid on the basis of 2½ cents per hundred pounds, which is the intrastate rate. (Tr. 98.)

Redirect examination.

By Mr. Walter:

These bills of lading specify the Pennsylvania and Chicago & North Western routing, which could be handled via the interstate route through Colehour, which is shown on the map as in Illinois, but is now claimed to be in Indiana. Before we knew we could move the shipments mentioned by truck at 18 cents per ton we said a 30-cent switching rate would move that business, but since we learned of this truck movement at the 18-cent rate, I am afraid there is no rate the railroads could make that would give them that traffic. (Tr. 99.) That door is closed as to the movement of pig iron to the Republic and a lot more down there. I merely cited the Republic in my direct testimony, but there is considerable more in the same district that could be involved in the same way. (Tr. 100.)

We have always endeavored to load coke to car capacity in order to reach the minimum 60,000 pounds; but in the 1932 movements mentioned there were some 530-odd cars which would not load to the 30-ton minimum. We think the 2½ cent single-line rate is too high, based on the volume [fol. 1457] that moves. We are still moving it at 40 cents cost because we do not want to set up a lot of equipment, but would have to if the rate went to 70 cents a ton. (Tr. 100-101.) The Illinois intrastate rates are lower than the present interstate. We would like to have the intrastate rate apply interstate. (Tr. 101.)

Roy W. Fletcher, called on behalf of complainants, was sworn and testified as follows:

Direct examination.

By Mr. Walter:

I am a statistician and selling accountant with office in the Daily News Building, Chicago.

Transcript of the record shows the following notation: "The experience of the witness in railroad accounting and statistical work is stated in the record in Docket No. 19610,

pages 3051 to 3056, both inclusive; there follows in this record, to and including page 163, direct and cross examination on pages 1 to 28, both inclusive, of Ex. No. 120 in Docket 19610." (Tr. 102.)

I have prepared an exhibit marked for identification as Ex. 120. (Tr. 103.) The Saur-Coverston formula under which the Chicago switching case cost study was conducted, and upon which the costs so arrived at were based, assigns engine time to classes of service or zones, according to a predetermined arrangement. As these car movements are scattered over the district, move in different directions, on different tracks, for different distances, on different railroads, it is necessary that all expenses involved be allocated to different zones, so that cars moving under these zones [fol. 1458] be charged with the expense. (Tr. 103.) Under the formula, after assignment of engine time, the next step is to proceed with average cost per engine hour, which brings every class of service to one base, treating every class of service alike. It is all right to take engine time to divide engine crew wages and engine investment in that time, but other costs necessitate localizing the cost of each movement if it is to be charged with its proper share of expense. (Tr. 104.) Taking an average and charging that to every district movement is improper.

Mr. Davis: I object to this testimony; it is a criticism of the formula, reiterating what they claim to be errors in the other case, which has already been decided, and has nothing to do with the record regarding discrimination as between interstate and infrastate shipments in this case. Ex. 120 is practically a reiteration of Ex. 13 introduced by Mr. Fletcher's predecessor. (Tr. 104-105.)

Examiner Eaul: The exhibit in a large part goes to the question of the reasonableness of the rates and might be more proper to be introduced in the complaint case rather than the Section 13 case. The first 29 pages involve reasonableness of the rates. The remaining pages refer more to the Section 13 case, but the exhibit seems to indicate it is primarily an exhibit which should go into the complaint case. (Tr. 105.) The witness may proceed and we will rule on the evidence as we go along. (Tr. 108.)

The Witness (continuing): In the class rate and livestock cases for Western trunk line territory I testified that cost

as generally assigned to different territories was not generally reliable for the purpose of building up costs for the purpose of a rate base. (Tr. 108.)

Mr. Davis: Is that all you have on your preliminary statement? (Tr. 109.)

[fol. 1459] The Witness (continuing): I am going to take up the different stages of the cost as used in this cost study and point out certain reasons why I think they do not represent reasonable assignments.

Mr. Davis: That is, in your exhibit?

A. Yes.

Mr. Davis: I move, then, that all this witness has said in regard to the formula or that he did in some other case be stricken from the records as not germane to the issue.

The Witness (continuing): It is to show that the Burlington Railroad and other carriers have filed their cost reports with the Commission under arbitrary rules, which costs were criticised by me and other accounting witnesses for the railroads to show that they are not reliable. I engaged in this cost study for the Burlington and am going to point out that further refinements in the basis would have produced different results.

Mr. Davis: I insist on the motion.

Examiner Faul: In so far as his testimony does not separate interstate from the intrastate traffic, I repeat that it will be primarily considered as evidence in the complaint case. In so far as it deals with the intrastate feature it of course relates to the Section 13 case. (Tr. 109.)

The Witness (continuing): On pages 1 to 4, dividing expenditures used in the cost study among 4 groups, shows the results for individual roads that were considered in connection with the cost study. The first group are expenditures directly proportioned to time required to perform switching service, covering time of yard conductors, brakemen and yard engines; and if crew wages on all types of engines are the same, and eliminating cost of subordinating switching service, then the estimate of cost is as accurate as can be desired. (Tr. 110.) The source of the [fol. 1460] information is Carriers' Ex. No. 2 instead of No. 4. The exhibit should be changed at the top of pages 1, 2, 3 and 4, referring to Carriers' Ex. No. 4 in the second line, to Carriers' Ex. No. 2. (Tr. 110.)

The second cost group, Identified Expenditures Effected by Both Time of Service Required and Performed, includes locomotive repairs and locomotive depreciation, shop machinery outlays, and other maintenance equipment, as a single group in connection with locomotive repairs. The difference in types and sizes necessitates dealing with the individual locomotive performing switching service in the different zones, the heavier types being generally used in classification yards. (Tr. 111.) A normal repair showing necessitates averaging cost over a representative road, as heavy or shop repairs go in cycles; and it would be necessary for a fair representation to have shop expenditures with the miles or hours of service for the different locomotives. (Tr. 111.)

The next group covers fuel for locomotives and maintenance of fuel stations. Different sized locomotives performing different grades of work do not use the same quantity of fuel. Railroads with which I have been connected have allocated locomotive fuel costs on the basis of miles and fuel consumed by locomotives of different types in different classes of service. It is believed such plan more appropriately apportions assigned costs to the use of locomotives in different services. In the Chicago switching case they average, over the whole district, the locomotive fuel costs except certain roads which dealt with different subdivisions. The Pennsylvania and Indiana Harbor Belt have three subdivisions, the Illinois Central 2, and the Burlington 2, but no distinction was made in single groups as to service performed at different locations. A practical test of locomotive fuel consumption can be made in different services. A practical method to determine fuel cost [fol. 1461] for switching service as against road service is to place men on the locomotives to count the scoopsful of coal used on a given trip, and weighing the average scoopful used in each class of service. (Tr. 112.) This method could have been used in the Chicago switching district. (Tr. 112.) The carriers did not separate the fuel used by individual locomotives and allocate it according to use.

The next group covers engine house expense and shop expense of exclusive switching roads, with a proportionate part of all trunk line carriers' engine house expense that would be assigned to locomotives engaged in switching service. A proper assignment of engine house expense as

between road and yard locomotives is very important. Mr. Vivian in one of his cost studies has considered yard locomotives in switching service receive about one-half the engine house service given road locomotives. (Tr. 113.) I do not mean that Mr. Vivian followed that difference in engine house service in this case. Mr. Oliver, in preparing his exhibit, had access to all working papers so far as the Burlington was concerned, but they have been denied to me in this case. The fact remains that engine house service is less for yard service locomotives than for road haul locomotives; and if that is so, engine house cost is over-stated. (Tr. 114.) Water supply, etc., go along with the type of locomotives in consumption of fuel and the use of an average cost per engine hour is not proper.

The next group is identified as Expenditures Assignable Directly to Zones of Service and Prorated to Cars Handled in Such Zones. (Tr. 114.) The carriers include in this group items of supervision of roadway and track, yardmasters' clerks, yard supplies, and yard switching signal tenders. (Tr. 115.) Under the formula covering time at industries, traffic is generally higher than in other [fol. 1462] service; in application of the general average there have been transferred costs from points where maintenance is incurred to points where maintenance is not incurred, that should not be included. Where tracks at industries are owned by shippers, the use of average engine-hour cost puts on that service a proportionate part of the maintenance; but if that cost is charged to general service, the maintenance cost assigned to industries where carriers own the property will be slightly higher. (Tr. 115.) In classification yards with substantial track mileage, maintenance would be substantial, with substantial investment, but under the carriers' plan of building up average engine-hour cost and spreading it over territories, the industry service is made to bear an exact proportion of a time basis. It is not on a classification rate. We have no showing of mileage of industry tracks or mileage of classification tracks, but the study shows much time charged to classification elements in connection with car movement; careful study of this should be made and expenditures localized as to zones and cars handled in those zones should be charged to that expense. (Tr. 116.)

The next group covers expenditures not included in groups A, B or C, which I claim should not be considered in a comparison for the purpose of a cost study. (Tr. 116.) The full amount of repairs to equipment should not be included. Operating expenses include retirement of equipment, representing difference between book value and amount charged for depreciation, and salvage allowance; which loss or credit is properly a deposit to the prior period except for the small part put to the period under consideration. (Tr. 116.) Under the cost study pro-rating general expenses on the dollar basis is not right. (Tr. 116.) As every dollar for labor or material or miscellaneous expense has the same weight. Certain expense items might [fol. 1463] increase, others might not, and using the dollar basis tends to offset the relationship. (Tr. 116-117.) I will point out an item where that might be brought about. I had occasion in the parcel post case to study the apportionment to railways for cars, postal cars.

Mr. Davis: I object to the testimony that Mr. Fletcher is giving. If he has figures demonstrating the conclusions he is attempting to reach, they might be of some help to us but there is no way of cross examining him on such conclusions without giving figures.

Mr. Walter: He is just now going to give another case to show his experience on that.

Mr. Davis: I want the figures to check him on.

The Witness: I will make a statement in this connection by saying it is not wise to give figures in these cases; it will be necessary to revamp the whole cost study from start to finish. (Tr. 117.)

Mr. Walter: That is one of the things we are going to insist on; that they must do.

Mr. Davis: That is getting back to the same question raised here early in the hearing. He has asked the Commission at least three times to open the cost study, which has been denied and now through this witness and exhibit he is trying to accomplish what has already been denied.

Mr. Walter: When you filed your petition for an order in the 13th section, you presented an issue which has to be decided and to be decided, you will have to consider the cost formula.

Examiner Faul: The witness may proceed. It is possible at the conclusion of his testimony it may be necessary to

take it bodily out of the case and put it into the complaint case as I believe it applies principally to interstate rates [fol. 1464] established by the Commission and the Commission has, with two or three motions, refused to reopen the investigation. (Tr. 117-118.)

Mr. Walter: That is true, but it is proper to state here that this formal complaint and the 13th section case, one or the other, or both, will compel the Commission to again open its mind as to what the lawful rate ought to be, state and interstate, in the switching district wherever the evidence is pertinent. (Tr. 118.)

Examiner Faul: The witness may proceed.

The Witness: Referring to the parcel post case, the general overhead expense of the Postal Department at Washington, was considered in the transportation of postal cars, and if railroad payments increased 25%, that was automatically treated for that service on a dollar basis as a proportion of the overhead. There is a substantial part of general expense charges that serve no connection with switching service, such as passanger accounting expenses, car accounts office, etc. These things are not done for the switching service and should be eliminated before prorating general expenses is undertaken. The only difference between pages 1, 2, 3 and 4 is that they deal with separate lines and there is a summary on page 2 showing percentages of expenditures for the 15 roads that would fall in the four groups. (Tr. 119.) In the first group, there is about 36%. In the second, about 33, in the third, about 27 and general overhead, 3. Item 28 on page 2 shows 2½% of the cost included in group C which relates to signal interlocking and crossing protection, all thrown into the general average and carried to the different branches of service on uniform roads. (Tr. 120.) Certain services do not get to the industry in connection with inter-locking or signal expenses connected with transfer service or main line service on the 8 roads; and throwing part of that into industry [fol. 1465] service is not proper. It should be charged to the part of the track or the operation benefitting from those services. (Tr. 120.) After an engine leaves the track protected by those signals, it should not share in the signal cost because cost arrangements for different movements should be confined to the items of expenses properly included in the specific movements. (Tr. 120.) Pages 5 and 6 show

items of expenses classified as optional accounts and expense items not mentioned in the formula. (Tr. 120.) The shippers' representative agreed to raise trunk line cost to the 100% basis by applying the carriers 90.8% relationship. Before comparing the switching road with a trunk line, carrier, there must be comparability between the two. The steps taken by shippers' representative in the original case in these respects, I do not know, but I show on page 6 that there are substantial items. (Tr. 121.) Take traffic expenses. Charging traffic expenses on a one line movement on the same basis as a 3 line movement or as between an inter-district movement involving a road haul does not appear proper to me. The record does not disclose freight loss and damage expense of switching movements that are comparable to the road haul; and no showing as to class of traffic or its value. These two pages show the items included in boosting the trunk line costs 9.8%. (Tr. 121.) Page 7 shows cost reported and its expansion for trunk line carriers and the relationship before and after expansion. (Tr. 121.) Page 8 continues that and line 14 shows these additions to trunk line carriers costs amounted to $15,763.97. In proving relationship between switching roads and trunk lines when it comes to items like dispatching trains on switching roads where there is a substantial transfer movement or main line haul care has to be exercised in not charging that expense to industry service which that service does not reach. (Tr. 122.) Page 9 shows data [fol. 1466] taken from statistics of railroads in the United States showing a proportionate part of operating expenses applying to labor and other items. It shows about 60% of operating expense is for labor. (Tr. 122.) Page 10 shows labor cost for individual roads identifiable in carriers exhibit 2 which shows approximation of reduction in costs on basis of present rates of pay. Applying the 60% basis to the total in column 2, we have about $496,000 and a 10% reduction in pay would reduce the cost for the week of all switching roads about $50,000. (Tr. 122.) Confined to actual labor charges shown in column 7, there would be an increase of about $36,000. Page 11 shows costs of fuel or costs of ties included in switching cost report in exhibit 2 for the different railroads, which lays foundation for applying fuel cost figures shown by page 12. Page 12, item 18 shows 1926 fuel cost was 10% lower in 1931 and cross tie

reduction 2%. Page 13 shows time spent by different roads as reported against the several classes of service including classification transfer, interchange, etc., with ratio of time for different items to the total. They vary for the different roads. Some are high in classification and transfer, and some high in industry service. The reference at the top should be to Exhibit 4. Page 14 shows number of cars handled by different roads conducting cost study for the different classes of service and relation of total for each item to the service for the road. (Tr. 123.) This shows quite a spread as between individual roads and between individual classes of service. Page 15 shows average per car cost for the different classes of service on cost study roads and relationship and ratio of each item to average cost. The average cost is a weighted cost. On the lower part of the page appears average per car cost and relationship of each item to the average for the several classes of service [fol. 1467] which shows quite a marked difference. Classification service shows as much below the industry and the individual as much above, the average for all services. If average engine hour costs is spread over the territories on basis of time, we might as well lump all cost studies and deal only with averages and both would be wrong. To have a cost study that is a fact, you must get down to class refinement throughout the study. (Tr. 124.) Page 16 shows different items of general expenses included in average engine hour costs for the several roads, which vary as between the roads. I have separated maintenance of way and structure costs between tracks and others, and have separated general expense cost between maintenance of way and others to arrive at an average cost weight that we might consider for application to the switching time at industries if we knew the time when the industries maintained the track. (Tr. 124-125.) Column 10, page 16 shows average engine hour cost for industrial service before expanding the cost from 90.8 to 100% for trunk line carriers and not including some offsetting adjustments resulting from higher maintenance cost for industries where carriers maintain the tracks. (Tr. 125.) On this page, item 6 shows carriers general engine hour cost basis for deviding expenses under joint service as $9.88. Item 8 shows $10.33. This cannot be said to be comparable because you have to upset everything to adjust this. (Tr. 125.) I don't know

what is included in the $10.00 per engine hour cost you refer to, whether it includes allowances for use of property, engines and tracks, but it is certain these costs do not include anything but operating expenses. Even if the $10.00 cost referred to included all expenses of operation and capital of carriers performing the service, none of the columns on my exhibit are comparable with that cost. All these costs would be increased if item No. 9 shows correct costs, and [fol. 1468] if the carriers were willing to take $10.00 as engine hour costs then all these costs shown would be excessive. None of the columns show items embraced in the $10.00 charge, assuming they get all the expenses to which capital and operation contribute because none of these have any allowance for use of property. (Tr. 126.) There is no basis for comparison because this is a general average and that is a specific charge for a certain service at an industry. (Tr. 126.) Page 17 shows excerpts from the Sauer-Coverston formula, showing that the termination of terminal cost in connection with road haul movements, yard tracks are not to be given the same weight as maintenance expenses for main line track but in the Chicago district switching study everything was on the same basis. (Tr. 127.) The carriers claim they include no trunk line charge for maintenance of main line tracks not used wholly or partly in switching service. But if we had the mileage of the tracks in the different zones, it appears possible to make arbitrary adjustments on the basis of differentials; because apparently, main line tracks used for transfer service are high class tracks of the company with a higher investment and these things must be considered in arriving at cost.

On the lower part of page 17 is set forth an excerpt from final valuation report on the Illinois Northern Railroad. "The carrier takes exception to omission from the tentative valuation of certain spur or side tracks leading to industrial plants. The tracks were paid for by the industry and are on land owned by them." And "The carrier argues that if the omission of these tracks is approved the result will be that the revenue earned by service over them will be subject to the recapture provision of the act, while their value will be excluded from the basis upon which the re- [fol. 1469] capturable excess earnings will be computed."

This indicates that industrial tracks owned by industries are substantial. (Tr. 127-128.) Page 18 shows mileage of switching roads in their annual report to the Illinois Commerce Commission. These reports indicate tracks that are main line, first, second, third and fourth and those classified as industrial tracks, yard tracks and sidings. Only the Indiana Harbor Belt reports industrial tracks. These reports are for the year 1926 and were used because we are dealing with the year 1926 in the Chicago switching case except as to switching costs where the study week was in 1927. (Tr. 128-129.) At the bottom of page 18, we show percentage that tracks classified in carriers reports to the Illinois Commerce Commission bear to the total if readjusted on the basis of taking 3 miles of yard track as equivalent to 1 mile of main line track. It makes quite a change in the percentage. In item 18 columns 7 and 18, the total of those two comparisons is about 67 and under adjustment shown for line 20 the relationship becomes about 40 and if we take these costs away from the yard tracks to the higher grade tracks, it would reduce a considerable amount from tracks that would be involved in connection with industrial service or yard service. The terms, first, second, third and fourth at the head of the exhibit on that page is the classification reported by the carriers in their annual reports to the Illinois Commerce Commission. In column two the mileage of the principal line of road; that is, that first constructed as the operating line, but with the expansion of traffic they would build another track along side of it. Some times they have 3 or 4 tracks. (Tr. 129.) There are first main tracks and second main tracks and third and fourth. (Tr. 130.) In item 23 for the Chicago and Western Indiana, we have some going into column 6 [fol. 1470] which is under classification of main line track as they report it. I use one mile main track as compared with 3 miles of yard track because the Sauer-Coverston formula states in making division of maintenance of way expenses of the track at a particular station where a study is made, that you shall take the costs in order to avoid assigning to each track in the yard the same maintenance you would have applied to the higher maintained main line or tracks of that character, so you would take 3 of 1 to be the equivalent of one in the maintenance cost. That is shown at the top of page 170 in the exhibit. I merely use the

Sauer-Coverston formula provision for terminal service in connection with road haul service. (Tr. 130.) Page 19 shows weight of rail in certain of main tracks as reported in the annual report of the Illinois Commerce Commission. This must be considered as two different classes of property because some are of higher class construction and greater investment and more money is required if a heavier rail is used. (Tr. 131.) The data shown is all that could be obtained from the records available to me. Page 20 shows summary for the several switching roads for years 1925 to 1931 inclusive, showing group revenues, operating expenses, operating ratio and net railway operating income for the different roads. All roads shown on page 20 are cost study roads except the Chicago River & Indiana, including the leased property of the Chicago Junction. (Tr. 131.) At the bottom of page 20, there appears the number of cars handled as obtained from annual reports of the Illinois Commerce Commission starting with 1926. 1925 was omitted because of limited time at Springfield in securing the data. In connection with column 2 showing number of cars handled, I state that cars reported for the Baltimore & Ohio Chicago Terminal represent only those applying to freight service though the cost shown for railroad operating expenses includes both freight and passenger service. [fol. 1471] That condition would carry into column 11. The cars handled include both loaded and empty in revenue movement. I have prepared a supplement to page 20 which has been marked by the reporter "Page 20½" and put in the original exhibit. (Tr. 132.) The averages shown on page 20½ of Exhibit No. 120 are derived by dividing the number of cars handled shown for the respective years into railway operating expenses for the respective years 1926 to 1931. (Tr. 132.) This shows using the Baltimore & Ohio Chicago Terminal that the averages are not correct because there is a division of total expenses by number of freight cars only, omitting the passenger cars. The expenses include not only freight cars, but the cost of handling passenger cars as well. The average is shown to complete the statement and to give the result that comes from it. No reason exists for omitting passenger service. I simply left it out when making it. The Exhibit was made at a later date to show the other railroads that the average cost per car on railways using the Chicago Belt was $2.41 as com-

pared with $2.18 for 1931 and $2.31 for the 6 year period. The same condition applies to the Indiana Harbor Belt and to Chicago River and Indiana but for smaller railroads there is a change but not so in the case of the Chicago Short line. The page shows that with a decrease in business that the average cost per car is lower in 1931 and for the 6 years below that of 1926. In 1931, costs do not include further reductions in labor costs made in 1932. (Tr. 133.) Page 21 shows switching revenue and demurrage on different switching roads for the years 1926 to 1931 which shows the relationship between revenue earned from switching and demurrage collected in connection with switching service. (Tr. 133, 134.) The carriers in their car detention cost made no allowance for receipt of demurrage. Some adjustment must be made in respect to that item but I cannot say what it should be. This revenue percentage relationship decrease started with 1926 and continued to 1931.

[fol. 1472] The upper section of page 22 shows miles of track wholly owned and used by cost study switching roads as reported in the tentative valuation by the Interstate Commerce Commission, including the Chicago River & Indiana and Chicago & Western and Indiana. In the central section of the page is shown cost of reproduction new, allowance for land and track structure, etc., for the several roads. The lower section of the page shows average cost per mile for the district. This page shows spread for the different roads as between different classes of property, and that in dealing with costs, including allowance for property investment it is necessary to assign property values to zones in which cars are handled. Nothing has been attempted in that line and until it is, you cannot establish a fair cost basis for operating ratios in cases as complicated as the Chicago Switching District, and produce reliable results. (Tr. 134-135.) Page 23 shows total as to items of value I have considered in building up and showing rate of return from operation. The first section shows investment in road and equipment on the books as of December 31, 1930, and is the date of primary valuation. These dates change somewhat, but most are in 1918 and 1919 and show net change in the property since the Commission appraised it, up to 1930. The second group shows ratio of cost of reproduction less depreciation, the cost of reproduction new at the date of valuation, separately, for

the physical property and the physical property including land. This shows that item 3 is a gross sum undepreciated. Applying the Commission's depreciation rate to additions shown in column 3, we have the amounts shown in columns 6 and 7. If these are applied they would bring a further reduction in value and reductions in base values and increase the rate of return. (Tr. 135-136.) The Commission after its examination deducted from or added to the cost [fol. 1473] of investment in road and equipment. These amounts are not large for any of the railroads except the part of Chicago and Western Indiana shown in column 12. The Commission made a definite readjustment there of $6,500,000.00. Items 10, 11 and 12 are the valuations by the commission of property used as of date of the primary valuation separately for land and right of way and for physical property. Items 13 and 14 show cost after deducting depreciation, excluding land and including land and final valuation as reported as of date of valuation by Commission. Some of these figures are taken from final valuation reports. (Tr. 136.) At the time of the original hearing herein, it was my understanding that there were no final valuation reports. (Tr. 136.) The lower portion of the page sets forth balance recorded on the books as of the date of basic valuation, December 31, 1930, and December 31, 1931, for the cash, and the same for material and supplies. Item 24 shows investment in road and equipment as of December 31, 1931.

These values are subject to readjustment as stated in the valuation reports. The prices are those of 1910 to 1914 average for physical property and date of valuation for land. They will be brought down to their proper status when the report is brought to a later dating. (Tr. 137.) In its valuation cases for recapture purpose, the commission has given weight to the price trend. We must do the same as to additions and betterments since the date of valuation up to present time. Some of those costs were incurred when the index was much higher than now or in 1926 when this case was first considered as to cost ascertainment. (Tr. 137.)

[fol. 1474] The difference between investment in road and equipment as shown on carriers' books and as to appraised values found by the commission must have consideration as to the date of basic valuation. (Tr. 137.) There is a

substantial difference for some of the larger switching roads, but it was not the policy in the accounting reports, known as appendix 2, of the tentative valuation, to make readjustments where definite sums were not definitely ascertainable, but there is some influence that leaves a difference between the book value and the Commission's appraisement of the Baltimore & Ohio Chicago Terminal of $64,000, the Indiana Harbor Belt, $4,982 and the Chicago River & Indiana and the Chicago Junction, $4,000,000.00 and for Chicago and Illinois Western $1,163,000. I have nothing for the Chicago Short Line, a small road, but for Chicago, West Pullman and Southern, the appraisal exceeds the investment by about $55,000.00; for the Illinois Northern, $236,000 and for Pullman Railroad, about $69,000. The net effect of these excesses and deficiences is about $16,000,000.00. If they don't represent value, that must be deducted from the books that were considered later for the purpose of establishing a rate of return. (Tr. 138.) Page 24 shows rate of return based on net railway operating income for 7 year period ending December 31, 1931, for year 1931, based on value as of that date. (Tr. 138.) Ordinarily, we could not take value to a closing date and the 1931 should be an average between December 31, 1930 and December 31, 1931, but on the investment showing the rate of return for the different roads shown in items 10 and 11 separated as a group for the 9 railroads and comparing it as a rate basis shows yield of 6.26% for the 7 year average and 4.48% for the year 1931, both of which being subject to readjustment to the extent of that $15,000,000.00 referred to as difference between investment account and reproduction cost which would be something more than 10%. (Tr. 139.).

[fol. 1475] It would increase item 10 from 6.26 to something over 7 per cent, and items 16 and 15 to show a return rate on the Commission's value brought down to date. Proceeding from Mr. Oliver's Ex. 13, as of December 31, 1926, and adding net changes in road and equipment, there has been no depreciation for changes since 1926, nor was there any depreciation in Mr. Oliver's exhibit for property that was added since the date of the basic valuation. (Tr. 139.) The rate of return for individual roads is shown and for the seven years is 7.89 per cent, and for the year 1931, 5.66 per cent. These readjustments would have a tendency to increase both of the rates of return.

Item 17 shows railroads' investment in road and equipment on basis of return on Commission's valuation brought to date. Using the Baltimore & Ohio Chicago Terminal as an example, we have in column 2, 78.42 per cent; to reach 100 would require adding 21.58 per cent for a trend of values, and so on across the page. The spread indicates all differences between amounts shown and 100 per cent. As to the Belt Railway, it would be 32 per cent; Chicago & Illinois Western, 33 per cent; Chicago River and Indiana, 10 per cent; as to other roads where valuations are in excess of book values, the percentage would be increased.

With the rate of return on property I deal with clerical cost and car detention cost and switching cost for the 26,166 so-called study cars for September, 1926. If the base total for September, 1926, on 42,666 cars was used, the total would be changed from $466,698 to $760,962, or an increase of 61.33 per cent to 100 per cent. If the costs are further expanded by an operating ratio of 70 per cent, referred to in the report, the total would become $1,087,088, and adding taxes and interest, $32,612. Expanded by 12 to [fol. 1476] place taxes and interest on the basis of a year, we would have $3,913,512, which capitalized at 6 per cent would account for property value of $65,000,000, and expanding that to take care of the total switching services we would have a figure of about $652,000,000 as property value item and tax item for the Chicago switching district. (Tr. 141.) These figures are merely approximations, but it shows the results of expansion of a 70 per cent ratio. Mr. Vivian shows in Ex. 101 an estimated switching revenue loss because of failure to increase state rates, of $1,017,000, which if added to average net railway operating income shown on page 24 for 7 years would produce better than ten and one-quarter million dollars, which would increase the rate of return to the recapture class on the average, but I have not made any adjustments in my figures for the proposed increase in revenue. (Tr. 141.)

Page 25 shows freight train car miles for the 9 trunk line study roads, used as a basis for computing average cost per car day on which to predicate car detention. This shows a variation in car miles and in cost of car repairs. They do not necessarily go side by side, but using four years they indicate that while average car mileage decrease was about 2 per cent, that car repair cost for 1926,

compared with the average, decreased about $10,000,000, or about 7 per cent, as shown on page 26. A fair average requires more than one year's figures because of ordinary fluctuations and heavy charges coming in different years on account of freight-hauling cars. A further consideration is that in August, 1925, the Commission changed its accounting rule regarding major labor division of investment in road and equipment, which had the effect of putting into operating expense with that year a cost that previously went in part to investment account. (Tr. 142.)

[fol. 1477] On page 28 is shown data with reference to serviceable car days, with average number of cars owned and leased by roads, whose cost and service per car days entered into the determination of the 64 cents per day, and it shows the same computations producing number of serviceable car days and based on 365 days in the year. These appear as item 3. The next two items are number of cars owned at close of 1925 and 1926, and the average. The lower portion of the page sets forth computations to show the spread in labor cost, including depreciation for the different lines. In noting these variations the relation of cars that were used in the Chicago switching district, represented by those of ownership by companies shown at page 28, would be important. Quite a spread for depreciation as between the several roads for the year 1926 appears. The lowest is about 9 per cent for the Burlington and the highest is 25.8 per cent for the Yazoo & Mississippi Valley. Referring to Mr. Oliver's proposal to readjust car detention cost to take care of amounts contributable to use and non-use, the showing in Ex. 97 indicates there was an average of about 16.8 miles per car for one-, two- and three-lines, and to double that would make about 33.6 miles. Using serviceable car days shown on pages 25 and 28 of my exhibit, we have about 33 car miles per day. (Tr. 143-144.)

Ex. 13, page 45, shows car detention for one line based on 6.6 to 7½ days; three lines, 8.7 days, and the average being somewhere around 8 days. Dividing 33.6 miles by cars in 8 days we find the run about 4 miles a day, but dealing with serviceable car days for the year and car miles for the year, we consider that those serviceable car days include all time in terminals or under day, and if we made some allowance for miles and the time at terminal service,

there would be quite a change that would be increased beyond 33. (Tr. 144.) In my judgment carriers should have [fol. 1478] considered a readjustment of this car detention, because we know there is a certain cost connected with car repairs directly connected with use, that do not wear out when standing still, unless stolen or something like that. Brake shoes and wheels do not wear unless they are in use. There are many expense items related to service as distinguished from time. (Tr. 144.) When it comes to the use study made in 1915 by the engineers of the American Railway Association, which is prior to the date of the cost study, as to Chicago switching district and not related to it, it should be taken into account that the car repair cost, the basis of the 64 cents per day charge, that basis is not related to Chicago switching district service, but is as to the service all over the United States so far as these cars moving by those companies are concerned. If we get a fair basis of cost per day we should use all costs of railway lines and get a car basis for it, and we would then escape this endless situation as to conflict between the different railroads. (Tr. 145.)

Examiner Wilbur: By page 20½ of your Ex. 120 did you intend to indicate the cost on which revenues or rates should be based?

A. No, sir.

Q. You did not?

A. No, I am introducing that exhibit and the explanation in connection with it to show that claims made in these proceedings that the costs now are more than they were in 1926 on the study, would cause higher rates. We are dealing with these roads and dealing with the average movement of cars, and we don't have a showing on the higher costs of the car, and what it would be dealing with all of the individual items, I have no idea. The study was based at a time when the Belt was $2.41, using the 1931 cost. The [fol. 1479] tendency is downward and the seven-year policy is downward.

Mr. Walter: We shall contend that the average of all cars moved, their cost of every kind, was $2,458 for the seven-year period, and that the minimum revenue of $18.00 per car is absurd.

Examiner Wilbur: Mr. Fletcher said he did not intend the figures to indicate any such thing.

The Witness (continuing): I do not qualify as a person who has made any actual ascertainment of switching service costs or as to main line movements, because I claim that is not possible, but under some formulas it may be possible to make it. Some of the investigations with which I was connected involved line-haul movements. I made no statement as to how cost of service on a particular commodity applies in switching as against road-haul movement, because I have no figures. (Tr. 147.) There might be one showing under one condition and another showing under another condition as to switching service itself or as to road-haul service, depending on the volume of traffic and operating conditions. My criticisms set forth in Ex. 120 differ from the criticisms made by shippers in their exceptions to the examiners' proposed report. Mr. Oliver approached his objections from the standpoint of charges against the industrial service by basing it on $10.00 per hour. I am not using that basis. I go to the formula that produced the higher cost and point out why it would naturally come out. Having come into this case after the issuance of the examiners' proposed report, the criticisms as expressed in Mr. Walter's brief express my thoughts generally along the same line. (Tr. 148.) But I am making practically the same criticism in other cases as to divisions between the Oregon Lines and the Minnesota Transfer, which I approached from the same standpoint because I [fol. 1480] think I am right, and I prepared the same explanation for Mr. Walter, approaching it from the standpoint of the criticism of the formula, which had never been studied by me before coming into the case; but after studying the report of switching at Little Rock I concluded there was not much difference between my point of view and that of the report, which gives me the opinion that this cost study needs some revamping. (Tr. 149.)

Examiner Faul: As a result of your examination of these cost figures, what conclusion have you reached as to the level of the present rates, both interstate and intrastate?

A. I have not come to any definite conclusion as to overcharge; I say that nobody will ever know what the level of the rates is going to be if you are going to make it solely on cost. Give consideration to all of these exceptions and put this cost study on a good footing. Not being a rate man I could not give an opinion as to the level of a rate, but what

I say is, that no one knows the costs from one-line, two-line and three-line hauls and cannot know until they study the conditions that the traffic moves under. The figures given reflect a different cost in a two-line than in a one-line, but I say these figures are not proof of that until you make the adjustments that are necessary; you can't know where you are coming out until you check the figures; taking the figures at their face without applying the exceptions, there is an apparent reason for the difference in the rates. I have no definite sum to apply. I say I don't know whether $10.00 per hour is right, whether high or low. (Tr. 150.) I don't know what it consists of, but if the $10.00 has in it a return for property use, then I would say that Mr. Oliver's $10.00 is too low. In car detention cost there should be a separation between use and non-use, but I cannot say what [fol. 1481] would be a fair amount. I have not had much contact with the making of this record. It is a large task. It was closed to me, though I asked access to it so that I might clear up points, realizing in the time I had I would not be able to go very far. A cost study of this type is a rather large-sized order. From the study made considering the adjustments that should be made, whether or not there should be a different rate for single-line or three- or two-line hauls, I would not express an opinion until the figures were returned. (Tr. 151.)

Cross-examination.

By Mr. Davis:

I have made in my adjustments no separation for state or interstate, and cannot make any statement at all as to whether those rates should be the same. My only opinion is that the costs as compiled by the carriers and as they were developed are too high, both as to state and interstate, as they are all mixed together and cannot be separated. I say you cannot correct the cost study; it has to be rebuilt and reframed. Before the proposed report came out in this case I was the Burlington auditor of miscellaneous accounts, but was not the auditor working with the committee to produce results. I worked with the committee whenever I could, but had nothing to do with the policy of this case, which was handled by the committee of which I was not a member. I have had nothing whatever to do with the consideration of these differences. (Tr. 152.)

I left out the Milwaukee C. M. division on page 1 of Ex. 120, as well as the Burlington item other than genera' yard cost, because amounts were not there and my only purpose was to make a grouping, not for the determination of a sum of money. I had no special reason to leave out the [fol. 1482] C. M. Milwaukee division on page 1 except in the first four pages, there were a lot of items to be dealt with and in other cases I just lumped everything I got from the report. There was nothing done in the way of a selection for any ulterior purpose. I am not finding any sum overcharged or undercharged. It was left out on page 1 for the reasons stated and put in in other instances just because of work involved. There was no reason leaving out index 223 on page 5 except going through your reports and comparing your accounts, my plan was to cut all costs that would account for this difference of 9.2 per cent. (Tr. 153.) I thought I had gotten everything in until this statement was shown, and then I found there was an item of $112.00 that related to account 227 that was sandwiched in the operating costs, and I was not going to rewrite the statement for that purpose. There was no reason for leaving out any costs. I wanted to get them all.

The great variations in the maintenance expense of the different roads referred to on page 16 of my Exhibit would not entirely disappear if I made a cost study on my theory and had all the time I desired. It would be a coincidence, after such study, if the maintenance expense or any other expense shown would be the same. It would vary no matter who made it, but the closer you get in refinements to the use of an average, the more comparable and the more strength your results have. As to engine-hour costs I did not arrive at a definite figure under my criticisms of their use as an average throughout the district. I merely gave effect to the things I have mentioned as criticisms of the formula. (Tr. 154.)

An agreed engine-hour cost of $15.00 in handling 15 cars per hour produces $1.00 per car cost. If the engine cost was reduced to $10.00 and they handled 7½ cars per hour instead of 15, the cost per car would be higher than when it cost $15.00 an hour and they handled 15 cars. (Tr. 155.)

[fol. 1483] In showing, on page 20 of the exhibit, Belt Railway net railway operating income of $1,998,797, I did not leave out of that item the joint facility account of

rents and income because it was a debit, nor would it have been my reason for leaving it in. When we deal with net railway operating income we have to consider the joint facility rent and equipment rent under the rule of the Interstate Commerce Commission. Under that rule joint facility rents are where there is joint use of property, and the Commission's plan of valuation is to leave the property out and credit whatever one gets from somebody else, and it is necessary to follow that plan throughout or else take and pick out a property value on things of that kind. In leaving out the joint facilities account of the Belt Railway, showing a debit, in failing to show the credit account for this road for the years 1930 and 1931, I will say I overlooked them in the credit item. Mr. Oliver made some adjustment, because there was an entry in the Belt Railway's account that he took exception to, which was identified in the record; when it came to the closing years I neglected to get that information, which was only procurable from Springfield, and when I got back I proceeded to deal with the amounts shown. I don't know what the adjustment was, debit or credit, and don't know why it was made. If the joint facility account shows a credit it should have been credited, and if a debit it should be subtracted, that is, if it is for the same thing. In this connection I may say for 1930 I don't think I made any allowance for any increased rates in switching. I merely took what was on the books, and if I am going to make any adjustments I would have to increase the revenue some more. These figures were taken from the annual reports of the carriers, but there were certain adjustments on account of increased revenues [fol. 1484] that Mr. Oliver made in the proposed rates. (Tr. 157.) I copied the annual report figures and that is all that this is, and if there are any errors in the figures I will be glad to correct them. (Tr. 158.)

Examiner Faul: I would like to ask, Mr. Walter, whether you will have any shippers testify in this case.

Mr. Walter: In 1961?

Examiner Faul: Yes.

Mr. Walter: No.

Examiner Faul: The record is so far conspicuous in its absence of shipper testimony.

Mr. Walter: Of course we are not making a case here except to sustain the rates. We have not gone out to find anybody to testify against us. (Tr. 158.)

Examiner Faul: I am simply calling your attention to the wording of the order. (Tr. 159.)

Recross-examination.

By Mr. Davis:

Referring to either the Baltimore & Ohio Railroad or the Belt Railway Company on page 20 of Ex. 120, column 2 or column 3, showing railway operating expense, I cannot say that expense is after the amount tenant lines running over the Belt or the Baltimore & Ohio has been subtracted from the total operating expense, as I do not know what is in there; that is the figure I got from the annual report. I do not remember a note in the annual report showing that to be the fact. At the bottom of the page, showing the number of cars handled, includes whatever is in the report to the Commission. The report calls for the number of cars handled at cost for tenant companies, loaded and empty separate; that is as much as I know about what is in there. (Tr. 160.) The report does not separate them. [fol. 1485] I do not know about the items shown for the Belt or the Baltimore & Ohio Chicago Terminal. The details of those items I do not know, as I merely copied them from the annual report to the Commission.

I show for 1931 on Baltimore & Ohio Chicago Terminal, 2,959,671 cars, but I do not know that the reports show 428,644 cars handled by that road, or that 2,531,027 cars were handled by tenant companies, as shown by the report. (Tr. 161.) If the report so shows I did not notice that. I did not examine the reports because I did not have time to do that. The same principle you referred to would apply wherever it is proper. (Tr. 162.) In compiling page 20 of Ex. 120 the item of costs there shown are the amounts shown in railway operating expenses, which exclude taxes. Generally in a cost study, items for overhead and return on investment are not included. It does include all the operating expense, and that is all it is intended to cover.

Mr. Davis: Now, that is all of my cross examination in regard to that portion of this witness' testimony and his

exhibit that will be transferred to Docket No. 24950. (Tr. 162.)

The hearing adjourned until May 11, 1932, at 9:30 o'clock A. M. (Tr. 163.)

At Chicago, Illinois, on May 11, 1932, at 9:30 A. M., the hearing reconvened pursuant to adjournment.

ROBERT I. PIERCE, called as a witness for complainants, was duly sworn and testified as follows:

Direct examination.

By Mr. Walter:

Am secretary and traffic manager of the Manufacturers Association of Chicago Heights, and testified in the previ- [fol. 1486] ous hearings in Docket No. 19610 at the May and September, 1928, hearings in the switching case. The statement I have prepared and introduce does not deal primarily with rates between Chicago Heights and the Chicago district, but is intended to apply in connection with rates within the district as well. (Tr. 164.) The statement is a comparison of per car revenue at the minimum weight of 60,000 pounds on interstate switching rates in the Chicago district of 3 cents for one-line, 3½ cents for two-line, and 4 cents for three or more lines-switching movements, with revenue per car on both interstate and Illinois intrastate single and joint line road haul rates from and to Chicago and a few other points, marked Ex. 3. (Said exhibit received in evidence and marked "Comp. Ex. No. 3, Witness Pierce.") (Tr. 165.) This exhibit is similar to Ex. 76 which I submitted at the September, 1928, hearing in the switching case, and the reference thereon, Docket No. 19610, may be stricken from the cover of the sheet. (Tr. 165.)

The exhibit includes only such road-haul rates where minimum carload weight would produce a car revenue of $24.00 and under. (Tr. 165.) As a result of increased interstate switching rates in the district, including Chicago Heights, the joint line road-haul interstate traffic to and from Chicago has been increased from a minimum of $19.00

to $24.00 per car. (Galligan's Tariff I. C. C. 182, Illinois Commerce Commission No. 81.) The minimum charge on single-line Illinois intrastate traffic is $15.00 per car, and single-line minimum charge on interstate traffic is $18.00 per car. Some corrections should be made on this exhibit. Page 2, line 3 from the top, reference mark circle 2, should be added after reference mark circle 1 on the line showing rate on scrap paper from Chicago to Joliet. Authority for this rate should be changed to read "Item 624-A, Sup- [fol. 1487] plement 13 to Galligan's I. C. C. 176." On line 4 showing rate on slag from Chicago to Joliet, the authority should be Item 710-A, Supplement 13 to Galligan's I. C. C. 176. The rate shown there will apply both on interstate and intrastate traffic. (Tr. 166.) Line 7, rail fastenings Chicago to Joliet, reference mark circle 2, should be added. On page 3, line 8, agricultural implements, Elgin to Chicago; line 9, arsenic, Chicago to Mendota; line 10, barrels, Elgin to Chicago, should all be eliminated from the exhibit because the rates are cancelled. Line 11, blue vitriol, Chicago To Elgin; line 12, carboys, Beloit to Chicago; line 13, grindstones, Chicago to Elgin; line 14, castings, Elgin to Chicago; lines 15 and 16, junk, Elgin and Mendota to Chicago; and line 18, machinery, Chicago to Elgin, should be eliminated, as these rates have been cancelled since the exhibit was compiled.

Page 6, lines 13 and 14, canned goods, Eola to Chicago and Chicago to Eola, the tariff authority should be changed to read, "Item 680-A, Supplement 8, to Chicago, Burlington & Quincy Tariff I. C. C. 17679."

On page 7, line 13, the word "spent" should be inserted after the word "lye." Line 15, paint, Aurora to Chicago, reference mark circle 1, should be added, and on line 16, paper, Aurora to Chicago, reference mark circle 2 should be added. (Tr. 167.)

On page 8, line 1, copper and brass, the word "scrap" should be added, and on line 8, containers, Chicago to Waukesha, Wisconsin, the miles should read 113 instead of 24. With these corrections and eliminations the exhibit contains 179 rates, applying on 82 different commodities, between 63 different origins and destinations, counting the origins and destinations only once, regardless of the number of different rates applying from and to those points. It contains 114 rates where road haul revenue is less than

[fol. 1488] $24.00 per car, 65 rates where it is $24.00 per car, and 54 where road haul revenue is less than $19.00 per car. Reference mark circle 1 indicates the application of rates between points shown, and reference mark circle 2 indicates the rates apply only on Illinois intrastate traffic. The exhibit shows only basing points and not points taking basing point rates or those intermediate. Where more than one commodity was named in the same item and taking the same rates from or to the same points, I have taken the rate only on one of the commodities named in the item. (Tr. 168.) The rates in the exhibit apply both for single and joint line road hauls, and except as indicated by circle 2, the rates apply on interstate movements to and from points in the Chicago district. (Tr. 168.)

Galligan's Tariff I. C. C. 175, naming local and joint rates on various commodities between Chicago and Aurora and points taking the same rates, applies to and from points on the Baltimore & Ohio Chicago Terminal, Belt Railway, the Chicago & Alton Railroad, Chicago & Eastern Illinois, Chicago and Illinois Western, Chicago & Western Indiana, the Chicago, Burlington & Quincy, the Chicago Junction, the Chicago, Milwaukee & St. Paul, Elgin, Joliet & Eastern, Illinois Northern, Indiana Harbor Belt, and Manufacturers Junction Railway in the Chicago district. These rates apply via all road-haul carriers from and to Aurora. They apply interstate from and to points in Indiana to the Chicago district and Aurora, unless restricted on Illinois intrastate movements as shown by reference mark circle 2. Generally the other tariffs shown in the exhibit, both agency and individual line issues, have similar application to that of Galligan's I. C. C. 175. (Tr. 169.)

The exhibit shows that as to revenue per car, the line of the Chicago switching district would extend to any point [fol. 1489] shown where revenue per car on joint line interstate road-haul traffic is $24.00 or less and on single-line interstate road-haul traffic where the revenue per car is $18.00 or less. The exhibits shows line-haul revenues which do not exceed $18.00 per car on single lines and $24.00 per car on joint line road hauls, from points as far distant from Chicago as Peoria, Bloomington, Aurora, Mil-

waukee and other points. As a general proposition the road-haul carrier will absorb the originating and destination switching charge down to $12.50 to $19.00 per car for the road-haul minimum. There are 35 rates in the exhibit producing a per car revenue of $15.00 for the road-haul movement, and 51 where road-haul per car revenue is $18.00 or less. The minimum one-line interstate switching charge in the district is $18.00. The minimum two-line, $21.00, and the minimum three-line is $24.00 per car. (Tr. 170.)

Vivian's Exhibit 99 in Docket No. 19,610 shows average car haul on Illinois intra-state traffic in the Chicago district during September, 1926, as 7.46 miles for one line, 15.77 miles for two lines and 22.7 miles for three lines. From Chicago to Aurora, 37 miles, to Joliet, 28 miles, to St. Charles, 36 miles and to De Kalb, 88 miles. The exhibit shows many road haul rates where the revenue per car would be $15.00 on single line Illinois Intra-state traffic and $18.00 per single line inter-state traffic. (Tr. 170.) Average per car revenue one line Illinois intra-state district traffic for September, 1926, was $11.18, for 2 lines, $19.38 and for 3 lines, $23.88. Average car loading for miscellaneous commodities reported by American Railway Association for years 1923 to 1927 inclusive for the Eastern District as 46,200 pounds for 1926. (Tr. 171.) Exhibit 7, Witness Saur, in Docket No. 19,610, shows average loading miscellaneous commodities for 1,712 one line hauls [fol. 1490] moving in the district in September, 1926, as 87,537 pounds per car. A rate of 5¢ which the Exhibit shows applicable to any miscellaneous commodities for road haul movement would produce a revenue per car on an average loading of 46,200 pounds of $23.10. A 3¢ rate for an average loading of 87,537 in the district, would produce $26.26 car revenue and at the 2½¢ Illinois intra-state rate, $21.88 per car revenue. A comparison of two and three line hauls in the district will show similar results. Quoting from Exhibit 11-A, page 62 and page 88, and Exhibit 11-B, page 9 and page 31, in Docket No. 19,610, the average two line haul distance between Chicago Heights and Chicago District, is 31.66 miles; shortest hauls 7.7 miles, longest haul 36.8 miles. (Tr. 172-173.) Three line hauls Chicago Heights to Chicago district average 33.42 miles; shortest hauls 6.13 miles; longest hauls 64.37 miles.

Chicago district average two line haul 21.32 miles; shortest haul 1.1 miles, longest haul 68.2 miles. Chicago district average 3 line hauls 26.53 miles shortest haul 3.4 miles; longest haul 89.54 miles. (Tr. 173.) In switching in the district, distances in excess of the average, do not make much difference. In the Chicago Heights study, carriers compared that with the average study of the entire district and when one point is taken for comparison with the entire district as to distance, that one point will show higher than the average for the entire group. (Tr. 174.)

Cross-examination.

By Mr. Davis:

The commodities followed by the circle reference 2, apply to state traffic only. There is no commodity rate on stoves from Aurora to Chicago inter-state. The rates followed by circle reference 2 apply only on Illinois intra-state traffic. The rates shown intra-state are joint line rates because they apply from points on lines within the district [fol. 1491] other than the road haul carriers. (Tr. 175.) Via the Burlington from Chicago to Aurora, would be a single line haul but the rates also apply from points on the Baltimore & Ohio Chicago Terminal, which would make a joint line, being more than one line involved. (Tr. 176.) On a movement originating in Chicago on the Chicago, Burlington & Quincy, and moving to Aurora, it would be a single line haul, but the shipment might originate on some other line in the district. A shipment from Chicago to Aurora, via the Burlington, after leaving Chicago, would be a single line so far as the road haul movement is concerned. There might be more than one line road haul after shipment leaves Chicago, taking Bloomington and Peoria as illustrations. In checking the Tariff, you will find they can move over more than one line outside of the Chicago District. The individual lines carry in their tariffs, a minimum car revenue ranging from $12.50 to $19.00 per car before they will absorb switching. (Tr. 177.) It may exceed $19.00. As I recall, the Chicago & Eastern Illinois absorbs down to $12.50 for the road haul movement. That is their minimum for their road haul movement for any point within the Chicago District, and applies to all commodities. (Tr. 178-179.) The Illinois intra-state minimum

reverse is $15.00 single line, 2 line $19.00. Interstate one line minimum $18.00 per car, 2 line $21.00 and 3 line $24.00. (Tr. 180.) These are the minimum car revenues for road hauls. The $15.00 per car minimum on Illinois intra-state traffic is for the road haul movement to the district. (Tr. 180.) Take the first item on the exhibit, tin cans, from Chicago to Aurora, via the Burlington, the revenue per car is $15.00 based on the minimum. If that shipment originates on the Burlington in Chicago and is handled by it to Aurora, it will get $15.00 per car for that movement with no absorption in the district on that. On the mini- [fol. 1492] mum in the district for single line hauls therein on Illinois state traffic, the revenue is $15.00 per car; but as between 2 industries on the Burlington in Chicago alone, it is $15.00 intra-state. (Tr. 182.) On a movement via the Burlington involving its $19.50 minimum before it would absorb switching, if the car originated on some connection in Illinois, delivered to the Burlington for delivery at Aurora, it would not absorb switching if it did not receive $19.50 for its road haul movement. (Tr. 183.) In the case mentioned, if the Burlington got only its minimum revenue of $19.50 for road haul movement, then the switching charge in the district would be in addition to the $19.50. (Tr. 184.) My belief is that shipments from Chicago Heights to the district move through Indiana as well as in Illinois direct. (Tr. 185.) Leaving out the emergency increases, the rates between Chicago and the district intra-state, are 2½¢ for single line hauls and 3¢ joint. From Chicago Heights through Indiana to the district, the rates would be those prescribed by the commission in Docket No. 19,610, of 3¢, 3½¢ and 4¢ respectively. (Tr. 186.) The tariff referred to in my exhibit #3 covers switching facilities both at point of origin and destination and item No. 1, tin cans, the revenue per car of $15.00 covers terminal facilities at Chicago and Aurora. (Tr. 186.) The rates we propose are 2½¢ for one line and 3¢ for 2 line and 3½¢ for 3, or more, lines, minimum 60,000 pounds on the commodities moving between Chicago Heights and the district. And I favor the preservation of the Lowrey basis all over the district shown intra-state and inter-state. I do not favor the same rates, state and inter-state, if the rates get too high. Assuming rates are reasonable for the entire territory, I would favor the same

basis for state and inter-state movements. Most of the commodities moving from Chicago Heights loaded in excess of the 60,000 pounds minimum. All industries at Chi- [fol. 1493] cago Heights, except one are located on the Chicago Heights Terminal Transfer Railroad. It is a short switching line about 2 miles long. (Tr. 187-188.)

Galligan's Tariff, I. C. C., No. 175 applying between Chicago and Aurora, shows the Baltimore & Ohio Chicago Terminal, the Belt Railway, etc., as participating carriers and on that basis, the minimum per car revenue would not be that provided in Galligan's tariff, of $19.00 per car for a 2 line haul. It would be the minimum shown on my Exhibit 3, for a 2 line haul that is less than $19.00 per car. The specific tariff published as against the Lowrey general tariff would be the applicable one. (Tr. 189.) It would apply to the Indiana side if the line operating through Indiana was shown as a participating carrier. Some of the tariffs publish rates as applicable between points which means that they apply in either direction. In my examples, I believe there is but one rate referred to which applies in one direction only. I do not know of actual movement under the rates published. (Tr. 190.) I would not be satisfied with the rates and minimums shown in my exhibit. The rates shown in my exhibit are for line haul movements. On page 8 of my exhibit, showing rate of 6½¢ per 100, minimum 30,000 pounds, Chicago to Berwyn, is published as a line haul rate. I have never understood that Berwyn was within the Chicago Switching District. (Tr. 191-192.)

S. L. Felton, called in behalf of the complainants, was sworn and testified as follows:

Direct examination.

By Mr. Walter:

I am traffic manager of the Acme Steel Company and have been since 1928. The Acme Steel Company manufactures steel articles at two plants within the Chicago Switching District, and a rolling mill business at Riverdale, (134th [fol. 1494] & Wentworth Ave.,) Illinois, is served by the Pennsylvania and the Illinois Central railroads, and another at Archer & Farrell streets, which is a finishing plant,

served by the Santa Fe and the Illinois Central railroads. (Tr. 193-194.) Strip steel at the Riverdale plant is forwarded to the Archer Avenue plant in switching service and after processing there, is reshipped about 50% in car load quantities and the rest in less than car loads. From Riverdale to Archer Avenue is a single line via the Illinois Central, and 966 cars moved in 1928, of total weight, 34,102 net tons. In 1931, there were 625 cars of total weight 22,607 net tons. We haven't the figures showing movement for 1927 and hence we use 1928. The movement from our plants to all destinations in Chicago Switching District was approximately 20% greater in 1928 than in 1927. The car movement to and from plants of the Acme Steel Co., in September, 1928, were 85 single lines, 62 two line, 11 three line and in September, 1931, 50 single lines, 41 two lines and 5 three lines; in March, 1932, 48 single line and 85 two lines. Between August 4 and 10th, 1928, we had no movements via the Baltimore & Ohio Chicago Terminal or Belt Railway of Chicago and only two via the Chicago, Milwaukee & St. Paul; 3 via Elgin, Joliet & Eastern and 21 via Indiana Harbor Belt. During the year 1928, we moved via the Baltimore & Ohio Chicago Terminal 110 of our cars; via the Belt Line, 128; via Chicago Milwaukee & St. Paul, 112; via Elgin, Joliet & Eastern, 32; and via Indiana Harbor Belt 205; total 687. Weekly average for 1928 via Baltimore & Ohio Terminal 2.2; Belt Railway, 2.56; Chicago, Milwaukee & St. Paul, 2.2; Elgin, Joliet & Eastern, .64; Indiana Harbor Belt, 4. Weekly average January to March, 1932 via Baltimore & Ohio Chicago Terminal, 1.3; via Belt Railway, 1.15; via Chicago Milwaukee & St. Paul, .61; Elgin, Joliet & Eastern, .38; Indiana Harbor Belt, 8.93; [fol. 1495] total 161. Between June 15 and 21, 1928, we had no shipments via the Chicago, Burlington & Quincy and the Chicago & Northwestern, but for the year 1928; we had 6 via the Burlington and 70 via the Northwestern. Between January and March, 1932, weekly average via Burlington .92 and via Northwestern .23, total cars 15. August 4 to 10 inclusive, 1928, via Pennsylvania 20; year 1928, 572, weekly average 1928 11 cars. Weekly average January to March inclusive, 1932, 14.72 cars. October 19 to 25 1928, and for that year, no cars via Rock Island; weekly average January to March, 1932, .02. October 15 to 25, 1928 via Short Line no cars and for the year, 1 car. Weekly

average 1928, .02. Weekly average January to March 1932, nothing; October 19 to 25, 1928, via Chicago West Pullman and Southern, 1 car. Year 1928, 40; weekly average 1928, .77; weekly average January to March, 1932, 1. October 19 to 25, 1928 via Chicago and Illinois Western, no cars; (Tr. 196) for year, 1; weekly average 28.02. Weekly average January to March, 1932, .03. Illinois Central, October 19 to 25, 1928, 27. For year, 1,368; weekly average for year, 23.3; weekly average January to March, 1932, 14.8. Illinois Northern October 19 to 25, 1928, 1. For year, 38; weekly average for year, .73. Weekly average January to March, 1932, .02. Pullman Railway, October 19 to 25, 1928, no cars; for year, 19. Weekly average for year .36. Weekly average January to March, 1932, nothing, Total October 19 to 25, 1928, 29. For year 1928, 1,467. Weekly average 1928 28.2. Weekly average January to March 1932, 2.11. (Tr. 197.) Intrastate inbound and outbound cars January to March, 1928, inclusive, moved 1 line, 250 cars, two line 158, 3 line 18, total 428. The same period 1932, 1 line, 164; 2 line, 102; 3 line 3, total 269. Interstate January to March inclusive, 1928, 1 line 1 car; 2 lines 34 cars; 3 lines 1; total 36. January to March 1932, 1 line 3, 2 lines 112, 3 lines nothing, total 115. (Tr. 197.) The Acme Steel Co., owns and maintains approximately 5½ miles of industry track at its Riverdale plant, including 1 railway track scale. It has a track scale at the Archer Ave., plant, with 60 feet of scale track. Maintenance of these for the 5 year period of 1927 to 1931 cost $27,492.70. If increased interstate switching rates applied to interstate [fol. 1496] traffic, the increased cost to Acme Steel Co., for period January to March, 1932, inclusive, on intra-state movement, would have been for 1 line, $2,549.80, for 2 lines, $2,290.20, for 3 lines, $93.00. The total increase on interstate movements for this same period would be $887.40. (Tr. 198.) Average loading of cars from and to Acme Steel Co., and to and from switching district points from January to March inclusive, 1932, was 40.3 net tons. (Tr. 198.) 20.8% of these shipments loaded 20.8 net tons per car. The steel moving from Riverdale plant to the Archer Avenue plant is 90% of all single line tonnage moving from Riverdale plant into the Chicago Switching District. The Archer Avenue plant was the initial property of the Company but as all material used there must be switched from

Riverdale, the cost of switching service is no small item in carrying on two distinct units. Any transportation cost increases would hasten the discontinuance of the Archer Ave., plant, the dismantling of which has been heretofore seriously contemplated and considered. (Tr. 199.) If that was done, the Pennsylvania and Illinois Central would be lines serving the Riverdale Plant. (Tr. 199.)

Cross-examination.

By Mr. Davis:

The first time I knew the company considered dismantling the Archer Avenue plant was in 1928 when I was asked to prepare switching cost and other handling costs between Archer Ave., and Riverdale. I do not know there will be discontinuance of the Archer plant whether the switching rates will go up or not. I am not on the board and my position is traffic manager. I would not know what took place before I became traffic manager in 1928. (Tr. 200-201.) The single line haul movement from Riverdale to Archer Avenue, via Illinois Central, in 1928 amounted to 966 cars and that figure is included in the number of cars [fol. 1497] moving via the Illinois Central in 1928 included in the list of cars moving via other lines. The difference between the 966 cars and 1,368 cars would be movements to lines other than the Illinois Central in connection with it. (Tr. 202.) The statement means, for instance, that a movement originating on the Illinois Central would go to an industry on one or the other of the roads named and that car would appear in both figures. The total movement of 158 cars in September, 1928, and in September, 1931 96 cars, reflects the falling off of traffic from 1928 to 1931. (Tr. 204.) We ship to points within the district from these plants and we have some interstate shipments. Figures on page 1 of my exhibit showing single line, 2 line and 3 line are both state and interstate shipments. As to average loads, my statement shows approximately 20% of the cars paid excess on account of loading less than 60,000 pounds, but we do not ask any change in the minimum weight if we have a reasonable basis of rates. I consider the present level of rates on state traffic within the district as reasonable with 60,000 pounds, minimum. (Tr. 205.)

H. H. BASCOM was called by complainants and was sworn and testified. (Tr. 205.)

Direct examination.

By Mr. Walter:

Am Assistant Traffic Manager of the Youngstown Sheet & Tube Co., and have been connected with it and its predecessor for about 17 years. It was formerly Steel & Tube Co., of America. We have a plant at Indiana Harbor, Indiana, one at South Chicago, Illinois, and one at Evanston, Illinois. The Indiana Harbor plant is served by the Elgin, Joliet & Eastern Railroad, the Indiana Harbor Belt, and the Belt Railway of Chicago. The South Chicago plant is served by Chicago Short Line Railway. Comparing vol [fol. 1498] ume of traffic in September, 1926 with September, 1931, and March, 1932, we find that for the first period, we shipped from our various plants, 942 cars into the switching district; 639 cars interstate, divided into 44 one line, 589 two line and 6 three line hauls and intra state 303 cars, divided into 58 one line, 149 two line and 96 3 line hauls; in September '31, 325 cars interstate, 6 one line, 317 two line and 2 cars three line; intrastate, 67 cars, 40 one line, 8 two line and 19 three line. In March, 1932, 304 cars divided into 204 interstate, 36 being one line, 167 two line and 1 car three line hauls; and intrastate 100 cars, 19 one line, 9 two line and 72 three line. During 1926, we had under demurrage, 1,130 one line cars, 2,465 two lines and 3,252 three lines; in 1927, 715 one line, 1,559 two line and 2,058 three line. The 5 year average of cars under demurrange from 1925 to 1929 inclusive, shows one line 1,119 cars, two line, 2,441 cars and three line, 3,221 cars. The 5 year average being 6,782 against a total of 6,847 for 1926 and 4,332 for 1927. (Tr. 207.)

In 1928 we performed our plant switching at Evanston and the North Western gave us two switches per day. At present the North Western performs the plant switching and we get one switch per day. At the steel plant at Indiana Harbor in 1928, the Indiana Harbor Belt gave 3 daily switches except Sunday, and twice on Sundays. Since 1930 it has switched twice daily, and since August, 1931, has given no Sunday service. The Elgin, Joliet & Eastern service has remained unchanged, having one delivery per

day and one pull per day except Sunday. At our Indiana Harbor coke plant in 1928 the Indiana Harbor Belt gave 3 daily switches, and this continued until February, 1930. Since then we have 2 daily switches except Sunday, and one on Sunday. (Tr. 208.) At South Chicago in 1928 the Chicago Short Line made daily interchange with the Indiana Harbor Belt, the Belt Railway of Chicago and the [fol. 1499] Elgin, Joliet & Eastern, with the present interchange of every other day with the Indiana Harbor Belt, interchange with the other lines being the same. In the original case empty hauls were charged against switching movements. Since September, 1928, railroads supplying our plants with cars for switching district business should have had very little trouble in picking up equipment at nearby yards on their own tracks, instead of going to connecting lines.

Comparing 1931 and 1932 intrastate cars with 1927 and the average five-year period previously referred to, our investigation shows, 1931 intrastate, one-line, 246 cars; two-line, 486 cars; three-line, 776 cars; total 1,858; 1932, one-line, 224 cars; two-line, 244 cars; three-line, 588 cars; total 1,056 cars; five year average beginning 1927, one-line, 715; two-line, 1,559 cars; three-line, 2,058 cars; total 4,332 cars. (Tr. 209.)

There is very little difference in handling service for delivery to road-haul carriers than service on cars to the switching district. A car from our plant at Indiana Harbor for delivery to the Belt at Clearing, and any other car for delivery to a road-haul carrier at Clearing, would receive substantially the same service between those points. This would be true on shipments from our plant at South Chicago or from Greenwood Boulevard, where the originating lines deliver to road-haul carriers or to connecting lines at some point of interchange. (Tr. 210.) In the original case I said that the movement of coal from the steel plant to the coke plant, and coke from the coke plant to the steel plant, would cause a different method of transportation if the rates on these movements were increased. With no rate change, we have put in a conveyor for handling these movements at even a lower cost than the rates charged by railroads. We have not yet moved heavy tonnage by truck [fol. 1500] between our plants at South Chicago and Indiana Harbor. We can move pig iron from South Chicago

to Indiana Harbor at a rate not in excess of 50 cents per ton, and shipments of this class in September, 1926, were 149 cars, 2-line hauls; and 167 cars two-line hauls in March of this year, practically all pig iron from South Chicago to Indiana Harbor. From 1926 to 1931 inclusive our shipments from South Chicago to Indiana Harbor were, 1926, 2,140 net tons; 1927, 12,710 net tons; 1928, 8,725 net tons; 1929, 23,580 net tons; 1930, 48,344 net tons; 1931, 69,495 net tons; or a total of 164,992 net tons.

The large increase in 1931 is caused by the considerable pig iron movement to Indiana Harbor prior to the increase in the rates. We have not shipped a pound from South Chicago to Indiana Harbor since the increases, and if we do, the traffic will move by water. (Tr. 211.) We maintain and own tracks at our Indiana Harbor plant, and for the five year period 1927 to 1931 inclusive the maintenance cost was $213,078.57. (Tr. 211.) The maintenance cost of our tracks at South Chicago over the same period was $149,206.39. (Tr. 211.) We have two pieces of track at the Evanston plant, and for the same period the maintenance cost was $448.93. The balance of tracks at the Evanston plant are owned and maintained by the Chicago & North Western. Our track mileage and investment therein as of December 31, 1931, is as follows: 35 miles at Indiana Harbor, $711,187.59; 4 miles at South Chicago, $206,175.81; at Evanston, .08 mile, $5,238.20; Total investment, $922,601.60. These are net figures after depreciation.

From the 1926 period to and including 1931 there has been a steady decrease in the loading of our materials. In 1926 we loaded 77.93 per cent of car capacity, with an average load of 82,887 pounds, while in 1931 the percentage dropped to 71.61 with average load of 79,800 pounds. Approximately 80 per cent of current car load orders are on basis of 40,000 minimum instead of 60,000 pounds mini- [fol. 1500a] mum, the former being usual minimum on iron and steel articles from Eastern territory. (Tr. 212.)

Our customers have arranged in some instances for trucking from our plants. There were four movements, each consisting of 6 tons. The customers made their own arrangements for that. (Tr. 213.)

Cross-examination.

By Mr. Davis:

The name of Steel & Tube Company of America was changed to Youngstown Sheet & Tube Company some time in 1927. It owned 3 plants at the time (Tr. 213), and are the only plants the company now owns located within the Chicago district. They have plants at other points. We have plants in Illinois within the district and plants in Indiana within the district. The shipments out of Evanston or South Chicago to points in Illinois, we pay the Illinois state rate. Out of the Indiana Harbor plant to points in Indiana we pay the Indiana state rate. If shipments move either way across the state line we pay interstate rates, which are higher than the state rates. (Tr. 215.)

We have open and use routes that handle shipments from our South Chicago plant to any point within the district on the Illinois side at the Illinois state rates. We have no rail route from Indiana Harbor to any point on the Illinois side of the district that will be wholly within the state. (Tr. 215.) In September, 1931, we had 67 shipments intrastate, and in March, 1932, we had, to the switching district, 304 cars and intrastate 100 cars, but as before stated, we have not moved pig iron interstate and to that extent there would be a falling off of interstate movements. There was an increase in the intrastate movement comparing September, 1931, with March, 1932. (Tr. 217.)

[fol. 1501] By Mr. Davis:

Q. It is a fact, is it not, that you take advantage of the lowest rate you can find in making your shipments?

A. I would probably lose my job if I did not.

The Witness (continuing): We are seeking reasonable [fol. 1502] rates for movement within the switching district, and according to my mind, the present Illinois state [fol. 1503] and present Indiana state rates, with 60,000 pound minimum, are reasonable for both intrastate and interstate movements. (Tr. 218.)

H. G. Legan, called in behalf of complainants, was duly sworn and testified as follows:

Direct examination.

By Mr. Walter:

I am traffic manager of the Morton Salt Company of Chicago, and have been with the company 18 years, which manufactures and sells salt. Its shipping or distributing point in the Chicago district is at Blackhawk and Elston, on the Chicago & North Western Railway. In September, 1926, we shipped 22 cars of salt weighing 706.27 tons. In September, 1931, we shipped 45 cars weighing 1507.97 tons. Comparing the first three months of 1927 with those of 1932, we shipped 81 cars weighing 2436.38 tons in 1927, and in 1932 we shipped 81 cars weighing 2924.73 tons. Our traffic moving to the switching district gets the same switching at our plant as that moving for line hauls. (Tr. 219.)

In 1926 the Illinois Central switched at our plant, at night, with an additional switch in the day if needed. The Chicago & North Western now gives 2 switches per day, one between 9 and 10 in the morning, and the other about 4 p. m. In 1926 and 1927 we were located on the Illinois Central, which owned the industry tracks there, which under our lease we maintained. The Morton Salt Company owns, and pays for maintenance of, tracks at our present location on the Chicago & North Western. (Tr. 219.) Based on 1926 tonnage, if switching charges had been on basis now proposed, we would have paid $8014.20 more in charges in 1928, 1929, 1930 and 1931. For the first 3 months [fol. 1504] of 1932 the amount would have been $584.95. (Tr. 220.)

Cross-examination.

By Mr. Davis:

Our plant is located at Blackhawk and Elston Avenues. We move salt there by rail and water. The majority of that in the summer comes by water, but not in the winter time. We ship a lot by rail in the summer time into the district. That is a certain kind of salt. Our plant is a sort of a warehouse. (Tr. 220.) We bring it here, pack it and put it up for the trade, and ship to all points within the district, wherever we have sales. We ship both to the Indiana side and to the Illinois side of the district. As far as we are concerned, the rates both state and interstate in the

district should be the same, if the rates are reasonable. As far as we are concerned, we can load to the 60,000-pound minimum. (Tr. 221.)

THOMAS E. REILLY, called in behalf of complainants, was sworn and testified as follows:

Direct examination.

By Mr. Walter:

I am in charge of traffic for International Paper Company at Chicago, Illinois, which brings paper from its various mills for storage and subsequent movement to customers in the Chicago switching district. We store at Taylor Street warehouse, Crooks Terminal warehouse, and North Pier Terminal warehouse, and the movement therefrom is to customers in the State of Illinois and within the Chicago switching district. (Tr. 222.)

From the Taylor Street warehouse at the present time the shipments to our customers move via the New York Central, the Belt, or the Indiana Harbor Belt and the Chicago & Alton, a three-line haul for which we pay 3 cents per hundred weight, or $18.00 per car, minimum 60,000 pounds, with average load less than 20 tons. In addition [fol. 1505] to the $18.00 and the regular storage charge, we are assessed a loading charge of 1½ cents per hundred pounds on cars loaded by the railroad company, which considering the material used in preparation for loading, amounts to approximately $8.50 per car. If the higher rates of 3, 3½ and 4 cents prescribed by the Commission apply, it would increase our present charges from $26.50 to $32.50, now handled by truck for $12.00 a car. (Tr. 222-223.)

Moving paper from Crooks Terminal warehouse on the Chicago, Burlington & Quincy to a point on the Chicago & Alton would require a three-line haul, which includes the Belt Railway. The switching rate from this warehouse is $15.00 per car for a minimum of 60,000 pounds, as the warehouse loads and blocks cars free of charge. The trucking charge on this movement is $12.00 per car. The new rates would increase this charge $9.00 per car, with the $12.00 trucking charge still in effect. We use trucking

companies that are partially owned by railroads. (Tr. 224.)

Shipments from North Pier Terminal warehouse on the Chicago & North Western to points on the Pennsylvania Railroad pay $15.00 per car, or 2½ cents per hundred weight, minimum 60,000 pounds. This is really a three-line haul involving the Chicago & North Western, the Belt and the Pennsylvania, but due to the connection of the North Western with the Panhandle, the 2½ cent rate applies. (Tr. 225.) There is some question whether the proposed increase will be from $15.00 to $21.00 per car, or $24.00 per car, depending upon whether or not this is a two-line or three-line movement.

We have a mill in the Chicago district located at 32d Street and Kedzie Avenue, on the Chicago & Illinois Western, but at the present time we do not supply customers [fol. 1506] from that mill, which is closed because of business conditions. In normal times we supply around 50,000 tons a year to industries on the Pennsylvania Railroad. Movement from that plant to customer would be via three lines in connection with the Illinois Northern. Some of the paper from the warehouses moves to our customers by rail. Where all-rail service is cheaper we use it, but where we can get a low truck rate we use that. This is due to the minimum, as it is practically impossible for us to load a car 60,000 pounds, the average being right now about 18 tons. (Tr. 225.) We pay the transportation cost as we sell f. o. b. mill, freight paid. If these increased rates prevail and we begin operation of the mill, we would not use the railroads for shipments.

Cross-examination.

By Mr. Davis:

The size of trucks we use varies according to teaming companies. Some have 17-ton capacity trucks and others a maximum of 9 tons. The minimum truck load varies and I cannot give it. The minimum could not be less than the weight of one paper roll, which weighs from 300 to 2000 pounds. (Tr. 226-227.)

The International Paper Company has about 45 mills in the South, the East and Canada. Newsprint paper rolls weigh from 1800 to 2000 pounds. The diameter of these

rolls varies from 28 to 40 inches, which permit loading 16 rolls to the car. We cannot load flat through the doorways. (Tr. 228.) We can load 25 28-inch-diameter rolls weighing around 1200 pounds each, which vary according to weight of paper; some weighing 32 and others 50 pounds per ream. With the exception of the North Pier all our paper movements within the district would be three lines. From the Pier the North Western used to deliver to the Panhandle, but now they deliver through the Belt; making three lines now. It formerly was a two-line haul. This is because we [fol. 1507] only have certain customers using the paper. (Tr. 229.) We haven't any interest in interstate traffic at all, and I do not know what that rate would be. (Tr. 230.)

The 18-ton average loadings were in standard 36-foot cars. We cannot load the rolls standing on end to the minimum in a 40-foot car. Direct shipment from our mills to Chicago, loading on end to our various customers, have 32 to 35 rolls, which does not give more than 28 tons. We think the present intrastate rates with a 40,000-pound minimum would be satisfactory. I am not interested in interstate rates. If the rate or the minimum is increased to the point that drives business to the trucks there is no advantage to the railroads. (Tr. 231.) We do not seek an interstate rate in this proceeding.

Mr. Davis: As this witness does not make interstate shipments and only interstate rates are involved, I move all his testimony, both direct and cross, be stricken out.

Examiner Faul: We have taken considerable testimony in this case involving both interstate and intrastate rates, and they are so closely interrelated between Docket 19610 and Docket 24950 that we will accept his testimony. (Tr. 232.)

The Witness (continuing): I see no reason for paying for a three-line movement where two lines have direct connection with each other. (Tr. 232.) Where such two-line route exists we think we should pay two-line rates. (Tr. 233.) My sole interest is to secure two-line rates for two-line hauls, or for three-line hauls to secure three-line rates. If carriers are allowed, through varying rates for one-, two- and three-line hauls, to route traffic over as many lines as possible, the shippers would be helpless (Tr. 233), and even though the Commission might say that was right, it would not necessarily make it so. (Tr. 234.)

[fol. 1508] H. C. Brown, called in behalf of complainants, was sworn and testified as follows:

Direct examination.

By Mr. Walter:

I am traffic manager of Illinois Brick Company, LaSalle Street, Chicago, which owns 6 plants within the Chicago switching district and 4 immediately outside. We handle both by truck and by rail within the district. (Tr. 234.) Due to decrease in brick consumption in the Chicago district trucks have been used very much more than under 1926 conditions. This situation cannot be controlled by carriers or by shippers. It is due to building decline in the Chicago district. (Tr. 234.) Except in one downtown section, where trucking is by contract, we own and operate our own trucks, varying in carrying capacity from 7½, 5, 4 and 2 tons down to one-half ton, which since January 1, 1932, we have been obliged, under Illinois law, to equip with pneumatic tires, and this has increased our speed from 9 to 11 miles per hour, and will increase the distance to which we can truck, to a great extent. Under present operations heavy trucks are limited to a maximum speed of 15 miles per hour by automatic control on the trucks.

The price delivery of brick on the job in the Chicago district today is $9.00, compared with $12.00 in 1926, which compares with the prices in Chicago from May, 1917, to May, 1918. On shipments handled by car, we have an average loading charge of 87.5¢ per thousand brick, weighing 2 tons, and 43.75¢ per ton and an unloading charge of 27.5¢ per thousand brick, where it is unloaded to the truck, which makes delivery at the destination of the job. (Tr. 235.) Using trucks direct from yards to jobs, eliminates both of those charges because we have no hand labor at all. On [fol. 1509] shipments, using a typical case of movement to the post office job, we were paying 87.5¢ per thousand brick loading charge and 27.5¢ unloading charge at the down town team track and $1.00 trucking charge from that point to destination and $1.10 per thousand brick under present rate which made total cost of $3.25 per thousand brick or $1.62½ per ton for rail movement. On the same movement from our kiln for a distance under 16 miles, direct to the

job, costs us under present rates, $1.95 per thousand bricks or 97½¢ per ton or 65¢ more per ton by rail, based on present 2½¢ one line hauls. (Tr. 236-237.) Beginning with 1924, and continuing to 1931, we have spent $74,661.50 for the maintenance of our side tracks owned and maintained by us.

Cross-examination.

By Mr. Davis:

In 1926, we moved within the Chicago switching district, 13,721 cars. In 1931, 202 cars, via. rail. (Tr. 237.) In 1926, our total sales in the Chicago district approximated 400,000,000 bricks and approximately 18,000,000 within the district in 1931. (Tr. 237-238.) The volume of brick in 1926 and 1931 were moved before the higher interstate rates became effective within the district with exception of the period from December 10 to January 1st. (Tr. 238.) In that period, we shipped 4 cars intra state. (Tr. 239.) The average load is about 20,000 brick to the car, depending on rail yard from which it comes. If from yards furnishing higher capacity cars, then the number of brick increases and is lower where lower capacity cars are furnished. We load cars to 110% of marked capacity. We moved 13,721 cars over our yard tracks in 1926 for shipments to points within the switching district, and 202 cars in 1931, (Tr. 239) 4 of which moved after the higher rates became effective. Our trucking charge for 16 miles at present is 97.5¢ per ton. We own our trucks and our labor costs vary because on piece work based on the number of brick handled [fol. 1510] per day by the trucks. Truck drivers do not load brick. This is done by the electric crane, direct from the kiln. (Tr. 240.) The 97.5¢ per ton cost covers operation of the truck, depreciation, up-keep, repairs and we try to maintain a small margin of profit on investment. There is no charge for loading or for unloading because the truck is dumped automatically. (Tr. 241.) We pay $1.00 from the car to the downtown district. The rates in the downtown district are somewhat higher than direct from our yards, due to congestion in this district. The $1.10 referred to was the freight rate, being 50¢ per ton, plus 10%. The 87½¢ loading charge was from yard to car and is not charged in the 97½¢ per ton figure because we do not use

it. Cars at the yard are loaded by hand labor which we do not have when trucks are loaded. The 27½¢ was for hand labor unloading from car to truck, which we do not have with direct truck movement. We pay truckmen so much per thousand brick with a minimum and that is to the man who drives the truck, with a guarantee of $35.00 per week minimum. Our depreciation charge is 6%. (Tr. 242.) In 1926 our truck operations were under contract but due to the depression, the contractors could not operate and we took over their entire fleet of trucks which we now operate ourselves. This happened in the early part of last year and, based on the price we paid, we figure depreciation at 6%. (Tr. 243.) Our contracts with the truckers called for so much per thousand bricks within certain territories. Due to the depression in business, the teaming companies owning the trucks threw up their contracts. With plenty of building in Chicago, they could make money, but when that dropped, probably 3,000%, I would say they did not have enough business to operate their trucks and we assumed the liability. Under the contract, the basis per thousand brick was $1.25 for the first two miles and that in-
[fol. 1511] creased to $2.35 for 15 miles. They did not quit because of these rates but rather because of the small volume of business offered. They made an enormous amount of money when business was good, but reducing that to one trip a day, as against 6 or 7 trips for the same truck under 1926 conditions made the difference between profit and loss. (Tr. 244.) We use self dumping trucks when we move shipments from car to job as well as from yard to the job. We pay for the gas for the trucks which is included in our costs but cannot state now the allowance for gas but will give you the detailed figures covering the 97½¢ per ton cost. (Tr. 245.)

Redirect examination.

By Mr. Walter:

If we had acquired and were operating new trucks, we could not use a 6% depreciation charge but based on their purchase price, we figure at this rate, we could depreciate them to the full amount in a period of about 10 years. The shipment by rail of the 202 cars in 1931 was probably due to two conditions involving car loading. We have a certain

amount of cars we load every day, to take care of country business. If country business is not developed, then we switch those cars to the downtown business to prevent demurrage accruing. We ship both state and interstate within the district. Our volume in thousands in 1931 was 4[illegible] of the 1926 volume, but our truck shipments were only 1[illegible]. 4 lbs. is the average weight per brick. (Tr. 246-247.)

E. L. Mayo, called by intervenors, was duly sworn and testified as follows:

Direct examination.

By Mr. Cardy:

Am connected with the Moulding Brownell Corporation and testified at the present hearing in Docket 19,610. The company maintains and operates stone quarries, sand and gravel plants and brick plants in the general building material business. (Tr. 247.) The stone quarries are located at [fol. 1512] Thornton and McCook, Illinois. We have 23 distributing yards in the Chicago District, located in all sections of Chicago. In the distribution, sale and transportation of crushed stone, sand and gravel in the Chicago switching district, there has been in the past two or three years a change in the condition with reference to the distribution and sale of crushed stone, sand and gravel in the Chicago Switching District both as to business conditions in the building industry and especially as to sand, gravel and crushed stone, the movements of which have shifted from rail shipments to truck deliveries and boat deliveries. (Tr. 248.) 7 of our 23 yards are dock yards located at South Chicago and on the North and South branches of the Chicago river. (Tr. 248.) Illustrating this change of movement, we have a contract for mineral aggregates on the Post Office job and on the Field job, the former at Van Buren & Canal Sts., running South adjacent to the Chicago, Burlington & Quincy, and Pennsylvania railroads, and stone for that job was trucked from our McCook quarry to yard one at 26th & Illinois Sts. The McCook quarry is on the Western rim of the district and 13 miles from that yard. Up to the first of April this year, we have already trucked

20,000 tons for that job or approximately 400 car loads. (Tr. 249.) After reaching our 26th Street yard, we handled the stone by batch trucks and from there to the Post-Office. The stone crushed was trucked from quarry to the yard and the sand used was brought to the yard by boat. Certain percentages of sand and stone are mixed with a certain percentage of cement which is called a batch operation and that moved by truck from our retail yard to the Post Office, which I referred to as batch trucking. (Tr. 250.) From the quarry to the retail yard, the truck movement was in straight lots of crushed stone. The trucks returning from the yard to the quarry are loaded with sand, which has reached the yard by boat, which gives loaded [fol. 1513] movement in each direction. (Tr. 250.) In moving, we pay 44c per ton for hired trucks transporting stone from the quarry to the yard. We own 80 trucks and we use contract trucks. The Post Office job started about the middle of September last year, since the last hearing in this proceeding. The Field job is at Adams & La Salle Sts., known as the Field Building. (Tr. 251.) We have delivered to date, between 5,000 and 10,000 tons of gravel on that job, trucked from 26th & Illinois St., yard and *and* part of it from Goose Island yard. In normal times, we probably would move that by rail from one of our pits. I mean by normal times the peak of business operations two or three years ago. At the time of the last hearing, there was a steady movement of 5 to 20 cars per day by rail from the quarry to the yard located at 95th & Eggleston Sts., on the Chicago & Eastern Illinois Railroad, but this movement was from Thornton. The movement from Thornton is now handled by truck, not to that yard, but to a yard at South Chicago and there is very little rail movement from the quarry to the retail yard today, although in 1928 and prior thereto, there was a very substantial rail movement. The difference in movement is attributable to the falling off in business and the high freight rates. (Tr. 253.)

Our maximum truck haul in the district made with our trucks is between 16 and 17 miles though there may be longer distances. We use all types of trucks, with varying capacities, from hydraulic dump trucks with maximum capacity of from 5 to 6 yards to small trucks with stationary bodies as small as 1 ton and then we have trailer trucks of 26 yards or 32 tons. We use trailer trucks in the district.

(Tr. 254.) Our maximum hauls from quarries to points outside of the district for one particular job is about 37 miles. Whether stone shall be trucked or moved by rail is generally determined by the sales department. Before [fol. 1514] quoting on a job, I give them the freight rates and then the operating department determines what the trucking cost will be and the job is handled in the way that is cheapest. (Tr. 255.) I am in charge of the traffic department of our company and quote the freight rates to the different departments. We have movements from our quarries in the Chicago Switching District to points in Indiana, most of which move by truck. (Tr. 255.) My company and the producers represented by me would prefer to ship our products to points in Indiana by rail instead of truck if the rail rates would permit. (Tr. 256.) The facilities at our quarries for loading trucks are the same as those used in loading cars. Each is loaded in the same manner and from the same chutes. (Tr. 256.) Taking transportation conditions and competitive conditions into account, my judgment is that a fair rate that would actually move the stone, sand and gravel traffic between points within the Chicago district would now be, for crushed stone, $15.00 per car, for one line; $20.00 per car for two line; and $25.00 per car for three line, believing that our suggestion at the former hearing for a rate of $20.00 for one line; $25.00 for two ling and $30.00 for three line is now too high. The rates now suggested, I do not think would affect any other commodities and as I speak for all Chicago Stone producers, we have practically no competition as far as rail movements within the district is concerned. (Tr. 257.) Up to a few years ago, there was a very substantial movement of stone on the Baltimore & Ohio Chicago Terminal and the Indiana Harbor Belt, and because of this substantial movement, they had a somewhat lower level of rates for one and two line hauls than some of the other roads, but those rates applied to all of the stone carrying lines enter- [fol. 1515] ing the Chicago District. We have what is termed dealer business, that is, we sold and shipped to dealers, via rail, building materials, that is, stone within the district, which is practically fallen off, as very little of that business moves today. Most of the dealers are getting to the quarries and picking up the stone and delivering direct to the jobs. Outside of the two jobs in Chicago that I have

mentioned, and the grade separation at 16th & Canal Sts., there has been no other large jobs in building construction since 1928, that I know of. (Tr. 259.) In carriers Exhibit 110, Docket 19,610, the car shown as moved from station 31 to station 32, was loaded with ground stone which is crushed stone and ground to a very fine degree and used in connection with asphalt work and is not the ordinary crushed stone or sand gravel we discussed this morning. (Tr. 260.) The carriers ordinarily know in advance about large movements of stone such as the construction of the post office building and they certainly do after the job is let. They solicit such business quite intensively. (Tr. 261.) We have moved 20,000 tons to the post office job so far, and as the construction period will cover two years, I do not know what the total volume of business will be. The rail carriers solicited that business (Tr. 261), but made no rate that would move the business in competition with the trucks.

Cross-examination.

By Mr. Davis:

The crushed stone and sand used at the post office job in the concrete work were mixed in our yard at 26th and Eleanor Street and thence trucked to the post office job. The ingredients in the mixture were weighed at the yards and then mixed; and there is no difference in that operation, in that delivery subsequent to the arrival of the materials at the yard as to whether they arrive there either by rail or by truck. (Tr. 262.) The contractor on the build- [fol. 1546] ing could have used the individual carloads of the different ingredients that go into the mixture at the job. (Tr. 263.) The cars of crushed stone and sand for the post office job could have been placed on the West Chicago, Burlington & Quincy track which was available for the job, though at the present time the track is used in suburban service. It is a stub track there and ends under the viaduct at about Polk Street, and would hold roughly somewhere between 20 and 25 cars. (Tr. 263.) It is used now as a storage track for the suburban trains, but there is more than this one track under the viaduct where the suburban trains are being stored during the day. I do not know that the post office people or those in charge of

the building made effort to get the use of those trucks and that they could not. There has been no change since 1916 on the local crushed stone rate via the Baltimore & Ohio Chicago Terminal except the additional emergency charge, which will expire March 31, 1933. (Tr. 264.) The Molding Brownell Corporation is a merger of a number of companies, effective January 1, 1931, and the 80 trucks now owned by it were originally owned by the individual companies, with the exception of trailer trucks, which have been purchased since January 1, 1931. The emergency rates became effective about January 11, 1932. The trucking mentioned has been going on for a year or more. (Tr. 265.)

I recognize there should be a difference in the rates for single-line, two line and three- or more line hauls, and a difference between two-line and three-line hauls. In Docket 19610 we show our loading around 56 tons per car, and on the $15.00 single line haul would equal about 1.3 cents per hundred pounds. (Tr. 266.) The $20.00 per car based upon that loading would equal 1.8 cents, and on the $25.00 per car would be about 2.2 cents per hundred pounds, and [fol. 1517] we feel we should have these per car rates on stone, and do not ask that rates be established in the measure of cents per ton, but in dollars and cents per car. We can load cars around 75 to 80 tons in 140,000 capacity car. With stone it easily loads beyond marked capacity, which is our general practice to so load. (Tr. 267.) As a general practice we do not load in excess of 10 or 15 per cent above marked capacity. Without tariff restriction as to amount of load, if the rates are on a car basis, there would be the restriction that the consignee might designate a shipment in less quantities and we would have to be governed by his requirements. We have many shipments from the quarry to our own distributing yards, and on those shipments there would be no restriction on the amount that could be put onto the car. (Tr. 268.)

We are interested in the interstate rates from our quarries to the Indiana portion of the Chicago district, or to any other point requiring an interstate haul. Ordinarily state and interstate rates for the same haul should be on the same basis, but I can see where state rates might be a little lower basis than interstate ones. With reference to the adjustment in the Chicago district, and speaking only for the stone traffic and its preponderance of that business

in the Chicago district, and having in mind, as previously testified, that 83 per cent of our business is in Illinois, I would say that intrastate rate might be lower than the interstate rate. (Tr. 269.) To the extent that there are more stone carrying lines serving Illinois points than there are serving Indiana points, we get a different service on interstate shipments than we get on intrastate shipments. The state hauls are much shorter than interstate, and Indiana points of consumption are more removed from Illinois quarries than the state points of consumption, and to raise the intrastate rates to the present basis of interstate rates [fol. 1518] in the district would require us to pay an increase on 83 per cent of district business. The average haul on state business is about half of the interstate haul. (Tr. 270.) Our maximum average haul, local, is 13.64 miles. (Tr. 271.)

In the rates I proposed I did not make any distinction between state and interstate movements. We would be satisfied to receive that per car rate on both state and interstate business. (Tr. 272.) If we do not get the car rates suggested for the various hauls, but a different rate, I am not recommending that we be given different rates for state application than for interstate application on stone within the district. (Tr. 273.)

The closest railroad track to the Field job is about half a mile, but we do not have a yard right at that point. A shipment direct from our quarry for use in the Field Building, moving by rail to the rail yard, would be about ¾ of a mile from the Field Building, the Illinois Central at Randolph Street, and all materials shipped in by rail for use in the Field Building would have to be trucked from some railroad yard. (Tr. 275.) Coming over the Illinois Central would be a one-line haul from one of our quarries within the district in Illinois. From McCook the movement would not be via the Illinois Central. We would handle that from our yard at 26th and Eleanor by rail; but stone originating at McCook coming into the Field Building, we would use either the Baltimore & Ohio Chicago Terminal and Alton, or the Indiana Harbor Belt and Alton, which would make a two line haul in both cases (Tr. 276), and the trucking from the railroads to the Field Building in those instances would be greater over the Illinois Central. The Baltimore & Ohio Chicago Terminal reaches

Harrison Street and its track is available to trucks, but they handle perishable products there. But handling over the Illinois Central at Randolph Street would not be the [fol. 1519] proper way because you would have to haul the material across the loop, would have all stoplights and traffic to contend with, so it would not be an economical operation, and the same thing would apply from Harrison Street or from the Alton delivery. We would have the stoplights if we trucked all the way, but coming from the west end of the loop it is better than coming from the east end. (Tr. 278.)

The rates of $15.00, $20.00 and $25.00 per car suggested would be a little lower than the proposed zone rates for Zones 1, 2 and 3 suggested at prior hearings. But there is no relationship and never has been any relationship between Zones 1, 2 and 3 and the rates within the Chicago district, and the zone basis has been passed on a couple of times by the Commission. I am a zone shipper myself, having plants in Zones 1, 2, 3 and 4, as well as being located in the Chicago district.

Redirect examination.

By Mr. Cardy:

For the post office job the trucking from the quarry to the retail yard for 13½ miles would ordinarily move by rail, but it moved by truck. (Tr. 279-280.) At the Field Building, if we had no trucks, shipments could be handled through Baltimore & Ohio Chicago Terminal at 12th Street and then moved from there. In this instance we could get downtown by rail, but I do not know how we could get it from the team tracks to the job. (Tr. 280.) The material for the Field Building reached our retail yard before trucking to the Field Building. The sand and gravel used on the Field job came from two dockyards, reaching there by boat. Whether stone or gravel originating at one of our quarries, it would move first to our retail yards and then would move by truck to the Field Building; and had it been stone, instead of gravel, would have moved the same way to the Field Building as the business was handled to the post [fol. 1520] office, and the carriers would have lost the rail movement from the quarry to the retail yard.

The minimum loading of cars is covered by Rule 86, M. C. B. Rules. (Tr. 281 282.)

Recross-examination.

By Mr. Behrle:

If the fine aggregate for the Field Building and the post office job had moved to our 26th and Eleanor Street yard the cheapest rail rate would be from Joliet or Lockport via the Alton, and if the bill of lading read "Sand" it would be 65 cents per ton plus the emergency charge, but into our Goose Island yard we would have no rail movement at all. The fact that we could move sand by boat to our yards at Eleanor and Loomis Street, and Goose Island, which furnished a return loading of trucks to McCook, did not altogether determine the delivery point of this material. (Tr. 283.) But it did have quite a bearing, although we could have handled sand to the Chicago & North Western team track from one of our own pits rather than bring it in by boat. We could have handled the Field job from team tracks because it was in straight loads and not a batch job. (Tr. 284.) We load sand or stone in a car placed on a team track ordinarily with a crane. The west track of the Chicago, Burlington & Quincy under the viaduct I have mentioned would not have permitted the operation of the crane under Canal Street to unload the cars (Tr. 284), but it was a possible delivery point. We could not have used a crane to unload there, but on a movement to those tracks we would have shipped the material in hopper cars and conveyed them to the upper level, and we considered that in servicing the post office job. (Tr. 285.)

We found as to the post office job that we could do it by batching it at our 26th and Eleanor Street yard and trucking to the postoffice, rather than shipping it in by rail and [fol. 1521] conveying the materials on to the street level and there batching it, at present rail rates. (Tr. 286.)

O. P. Chamberlain, called as a witness by intervenors, was duly sworn and testified as follows:

Direct examination.

By Mr. Cardy:

I am connected with Dolese & Shepard Company, a producer and wholesaler of crushed stone, operating a quarry

at McCook, Illinois, on the Chicago & Illinois Western Railroad. Have been connected with the company since 1904, during the greater part of the time looking after the Chicago & Illinois Western Railroad and have also been an employe of the stone company. At present am the president of the Dolese & Shepard Company. (Tr. 287 288.) The Chicago & Illinois Western is a railroad extending from a point near Willow Springs to a connection with the Panhandle near Campbell Avenue; have been with the railroad since 1904. After an investigation by the Commission some years ago it was classified as a class "B" trunk line, but its principal business is switching. My connection with the company was from 1904 until 1924, at which time I was its president and had been since 1920. (Tr. 288.) The Dolese & Shepard Company has no rail connection other than Chicago & Illinois Western, now operated by the Illinois Central Railroad, and the Dolese & Shepard Company has no connection with its operation. I was present during former hearings of this proceeding. There have been many substantial changes in the transportation, sale and distribution of crushed stone in the Chicago district since that hearing. (Tr. 289.) At the time of the institution of these proceedings the stone price was about 80 cents per ton at the quarry. That has dropped, due in part more to keen competition and in part to much [fol. 1522] smaller demand, and the 1931 average price was about 52 cents per ton. In our production we have made every effort to keep expenses down to meet conditions, and everything has come down except railroad transportation cost. That has not been lowered and in some cases has been raised. (Tr. 290.)

There have been differences since the proceedings were instituted in the transportation of stone in the district. In the past three years the tendency has been to handle stone in the Chicago district by truck instead of by rail. We have not encouraged that movement, and it is my judgment, every thing else being equal, that it is much better business for us to load stone on cars for destinations within the district, if possible; but conditions have practically forced us to change our rail loading facilities and to add truck loading facilities to permit delivery by trucks. (Tr. 290.) In 1930 deliveries of stone in the Chicago district by truck were 14.4 per cent of the total. In 1931 truck de-

liveries of stone equaled 18.3 per cent; the first four months of this year truck deliveries to the district were 31.4 per cent of total deliveries. In 1929 my recollection is that truck deliveries were about 10 per cent of the total. (Tr. 291.) We do not operate retail yards in the district. For the past ten years we have been a strictly manufacturing and wholesaling organization. Our situation differs from that of the Molding-Brownell and the Consumers Companies.

Instead of delivering to our own yards our business in the Chicago district is largely deliveries to building material dealers, though not entirely, having delivered some material direct to building contractors for street paving and for road work. We have delivered and still do deliver considerable business to the steel mills. We do very little [fol. 1523] trucking from our quarry. (Tr. 292.) When we need truck delivery we hire the trucks. We have delivered small orders by our own trucks, but most of the business trucked from the quarry is sold f. o. b. trucks at the quarry and the purchaser buying the stone has the option of purchasing f. o. b. quarry or purchasing delivered at some track. We sold stone for the 16th Street grade separation, which was a railroad proposition (Tr. 293) for separating by viaducts the lines entering the Grand Central Station and the 12th Street Station from those entering the Union Station, which were formerly at grade, but in 1930 and 1931 were separated. The work was in charge of the Chicago, Burlington & Quincy Railroad's engineering department. The stone for those viaducts, 56,000 tons, was delivered f. o. b. trucks Dolese & Shepard Company quarry to Material Service Company, a building material corporation. (Tr. 293.) A small portion of this stone was delivered by truck from one of the Consumers Company yards. Our quarry is 12 miles from where the stone was used, and the stone could have been moved by rail via the Chicago & Illinois Western to Clyde Yards and thence Chicago, Burlington & Quincy to the job. The job was particularly adapted to rail movement because many railroad tracks with plenty of room for construction work and delivery of the stone. The steel was all delivered by rail, it being a concrete steel job. (Tr. 294.) Based on my knowledge and experience and including the railroad business, in my judgment, if this job had been done in

1927 or 1928, this material would have been moved by rail. (Tr. 294.) It was cheaper to handle this business by truck; if handled by rail it would have required delivery into receiving yard at the job and there distributed by truck. The combined cost of rail, plus trucking charge, exceeds the direct trucking cost from quarry to job. (Tr. 295.) Based upon my railroad experience and knowledge of the stone business, my opinion is that a rate from the quarry to the [fol. 1524] switching district of $20.00 per car might have given that business to the railroads for that particular job. (Tr. 295.) I cannot estimate what the trucking business from the quarry will be for 1932, though I am satisfied that trucking is increasing, though for March this year, it ran a little higher than April, but for the former month it was 43% of the business from our quarry. We have made shipments from our quarry to points in the switching district in Indiana. Our interstate business for the past 2 or 3 years in addition to shipments to Chicago, has been to points in Southern Michigan, Northern Indiana, including Indiana points in the switching district. Formerly, we did considerable business at Whiting, Indiana. Previous to the increase in the rates in this proceeding, and as late as September, last year, we shipped considerable stone to Whiting, Indiana, however, and East Chicago, but the increase in the Lowrey 50¢ rate for one and two line hauls to 70¢ has caused that business to move by truck, which is now transferred by truck from a quarry nearer to the Indiana line than we are. (Tr. 296-297.) We are shipping stone from our quarry in Illinois to points within Indiana, but not within the switching district. We have not had a carload shipment this year within the switching district. It is our desire to continue to enjoy our market in the switching district in Indiana; and in a general way, considered it a more profitable business proposition to load our stone on cars and move by rail than by truck because the operation is simpler. We have less weighing and it is cheaper to handle at the quarry, but conditions have practically driven us to movement by truck. (Tr. 297.) Based upon the low cost of commodities mentioned and my experience in the railroad, and in the stone business, my opinion is that a fair rate for one, two and three line hauls with minimum 100,000 pounds, or capacity of car, would [fol. 1525] be $15.00 per car for a one line haul, $20.00 for

two lines and $25.00 for 3 lines, and that these rates would bring the business back to the railroads. Originally we suggested $20.00, $25.00 and $30.00 for these respective hauls, but at the present time, those rates would not attract the business. Those views are expressed after very careful consideration and study of the situation. (Tr. 298.) There is a difference in the transportation of stone intra-state and inter-state, within the district. The average interstate haul is considerably greater than intra-state within the district, according to our records. (Tr. 298.) Based upon my railroad experience, car revenues in switching service are generally figured in car lots; not in tons, but in cars for a given amount. We do not figure in tons except on line haul business and it is just and reasonable to apply a per car charge in switching movements. In a general way, the railroads recognize the car rather than the ton as the unit of transportation in switching movements, but I believe that in switching a commodity, rates should be placed on cars and not on tons. This year's business was less than last year's business and last year's business was less than the year before. My attention has not been called to any effort on the part of carriers to get this business back to their rails in the way of offering a rate that would attract it. (Tr. 300.)

Cross-examination.

By Mr. Davis:

If it cost me $1.00 a ton to produce a thing, and I could get but 80¢ for it, I would try to make arrangements to produce it for less than 80¢, otherwise I would not want the business. But if you are speaking about the railroad business with reference to soliciting business which costs more to handle than could be received for it, I would say [fol. 1526] that that cannot be determined, based upon any one movement of the railroad. And as to our own business, with competition the last two years and the manufacturing business generally, we have moved some business at below cost because certain prospective purchasers suggest that we should not make money on stone when they cannot make money on their products. In 1931, approximately 20% of our total business was sold F. O. B., quarry and in the first 4 months of 1932, probably 25%.

Our only operating quarry is at McCook and we have no material yards in the district, though we sell to material yards in the Chicago district, which is sold either F. O. B. quarry or F. O. B. the yard. The price, F. O. B. quarry, is higher per ton or per yard than the price we would quote at quarry, shipped on a delivered price. If the buyer receives it at the quarry, due to fact that we are compelled to load it on trucks which is more expensive than loading on cars, we feel we are entitled to a little more money and can generally get 10¢ or 15¢ more than if delivered by car into the dealer's yard. (Tr. 303.) When I said 56,000 tons of stone were used at the 16th street job, I meant the construction of the concrete and steel viaduct. Ballast is a separate proposition, that is, generally handled by railroad companies and not by the contractor. My recollection is that Mr. Cardy asked me if a rate of 20¢ per ton had been in effect in 1927 for a two line haul and this job had been built at that time, whether that rate would have caused the material to move by rail and I said in my opinion, that it would, I mean $20.00 per car. There has been no change in the rates from McCook to the district since 1916 except the 10%, Ex Parte 103. (Tr. 305.)

Redirect examination.

By Mr. Cardy:

The other question you asked me was for my opinion as to the movement of this material by rail, if the job had [fol. 1527] been constructed in 1927 or 1928 and I said, in my opinion, that it would have moved by rail at that time, even under present rates. (Tr. 306.)

Recross-examination.

By Mr. Davis:

The rate was the same then as it is now with the exception of the 10% increase, but the conditions are entirely different. Stone is selling today for less and everything going into the production and transportation of stone except transportation charges have been lower since that time. The condition of all business, in the former years was on a higher plane; general selling price at least 40% higher than the present, or practically 40%. My testimony as to the

56,000 tons relates to the concrete and steel viaduct. The Baltimore & Ohio Chicago Terminal did not deliver any stone for the viaduct. The cars of stone you refer to as having moved to the different railroads was probably stone they brought in to ballast their tracks after the job had been done. This material they would probably bring in and dump it where they could use it on the track. (Tr. 308.) But the stone used to construct the steel and concrete viaduct did not move by rail. (Tr. 308.)

Redirect examination.

By Mr. Cardy:

There has been some increase in the movement of stone by water to Chicago that has affected the competitive situation. Considerable stone moved by boat as well as gravel competing with stone; that has come from across the lake. Stone by boats has come mostly from Sturgeon Bay and delivered in the Chicago River. The water transportation permitting them to compete very closely with our stone. (Tr. 309.) The stone from Sturgeon Bay has been coming in for about 4 years. We do not operate our own trucks from the quarry. We do not attempt truck deliveries in quarries except by selling to the material dealer and allowing him to truck it or by using hired trucks. We have [fol. 1528] hired as high as 25 trucks at one time to make deliveries ourselves, but they were under our control, which we seek to avoid if we can. Many material dealers have their own trucks and they prefer to use them and that applies to some large road contractors, they prefer to come to the quarry with their own trucks. (Tr. 310.)

Recross-examination.

By Mr. Davis:

I did not testify in the case at the hearing in 1928. Mr. Womer testified and I attended the hearings. (Tr. 310.) In selling fluxing stone to the steel companies, it does make a difference whether the freight rate is 76c or 60c. If the company buying it can secure it at a lower freight rate, it has an effect on its cost. (Tr. 311.) December 9, 1931, fluxing material for the steel corporation was sold F. O. B.

our quarry. I do not know what the freight rate was at that time but when a change was made not in freight rate but in trackage, the steel company forced a reduction in our price F. O. B. quarry, because it had to pay more freight. As stated, our sales to the steel company were F. O. B. quarry, so much per gross ton and as I have stated, the freight rate had a good deal to do with it because the higher the freight rate, the less that company had to pay, if it had a haul at a lower rate. (Tr. 313.) We haven't any freight rates today; we deliver F. O. B. quarry and have always delivered business that way. If we are selling on a delivered basis today, a reduction of 16c in the freight rate from the quarry would be to our advantage, but as I have said, we are not operating on that basis today. We sell F. O. B. the quarry. (Tr. 313.) Our shipments to Indiana points within the district moving by rail were handled for Indiana Harbor delivery. Our deliveries there were to four points and the rate at the time was the Lowrey two line haul at 50c per ton. We would now pay the new two line rate according to the tariff. If you will look, you [fol. 1529] will see that from Chicago & Illinois Western points, most of those points are checked as a two line haul. (Tr. 314.) Whether it is physically three lines and the intermediate carrier is taking cars, perhaps physically in most cases it is a 3 line haul but is checked in as a 2 line haul and is the same now as before the change was made in the tariff. (Tr. 315.)

E. L. MAYNARD recalled by intervenors.

Direct examination.

By Mr. Cardy:

The Molding-Brownell Corporation has been buying sand and gravel and crushed stone for our docks and shipping by boat to our docks since November, 1930. (Tr. 315.) In November, 1930, we shipped to our Goose Island yard 5,000 tons of stone from Sturgeon Bay, Wisconsin, which was the first large movement of the company, though there were other movements by other vessels prior to that time. We have bought considerable sand and gravel shipped by boat from Ferrysburg, Michigan, and some gravel from Lockport, moving by barge on the drainage canal and up the

Chicago River. There is quite a substantial movement of sand from Sarnia, Ontario. I know of one boat operating between Lockport and Chicago, and as to lake boats, five operate in connection with our business, though that is not all that operate to the Chicago district. The five boats are actively engaged in handling sand, gravel and stone for our company, but they handle other business as well. (Tr. 316-317.) The substantial water movements of these commodities has taken place since the last hearing, although there was one trip in our business prior to the advance. (Tr. 317.) I cannot give actual figures as to the amount of tonnage our company handles by boat as against crushed stone originating in the district, but the amount is very [fol. 1530] substantial, however. (Tr. 318.) This water competition has been a serious problem to some of the producers in the district. It has been serious to this extent, that the Elgin, Joliet & Eastern to Gary and South Chicago has eliminated the emergency rate allowed in Ex Parte 103. (Tr. 319.)

H. G. Brown recalled for further cross-examination:

Cross-examination (continued).

By Mr. Davis:

I have the details of truck cost requested by you. In figuring the operation in connection with trucks we made up a budget and we figured that on a per day basis first. We figured depreciation at $2.00 per day per truck; Illinois and city license cost, 50 cents per day (Tr. 324); gasoline, $1.50; oil, 50 cents; repairs, $1.00; tires, 50 cents; driver $9.00 per day; making a total of $15.00 per day. (Tr. 324.) On the haul of 15 or 16 miles mentioned this morning, on which we charge $1.95 per ton, or 97½ cents per thousand, we would handle 4½ tons on those trucks, making $8.77½ per load per trip; two trips, $17.55, three, $25.32, and four trips, $35.10. (Tr. 325.) This calculation is based on 300 working days per year, and we have not allowed for return on investment. These figures are based on cost, including depreciation based on the price we paid for the trucks. (Tr. 326.) We carry insurance on the trucks and that will be included in the overhead. The insurance covers all lia-

bility, including personal injury. The trucks operate out of the Weber plant, and all others, including Northbrook to points in the immediate vicinity of the north section of Chicago.

In setting up our figures we estimated 90 miles per day [fol. 1531] as maximum mileage on the long-haul business. On short haul our minimum mileage at 35 miles, and somewhere between those two would be the average, but that we have not figured. (Tr. 327-328.)

Mr. Walter: That is complainants' case, if your Honors please. (Tr. 328.)

E. S. GUBERNATOR called in behalf of intervenors:

Direct examination:

Am general traffic manager of Lehigh-Portland Cement Company, and am familiar with cement rates in and about Chicago, having had ten years' direct contact with them while located in Chicago and since have kept closely in touch with them. My appearance is for the Lehigh-Portland Cement Company and the Marquette Cement Manufacturing Company, which manufacture and market cement, with plants located at Oglesby, Illinois, in the LaSalle switching district. They compete in their largest market, Chicago, with the Universal Portland Cement Company, located at Buffington. Cement is a low grade commodity sold on a delivered basis, and on sales in the Chicago market they must meet the delivered prices of the Buffington mill. The LaSalle plants are on the Illinois Central, Chicago, Burlington & Quincy, and Chicago, Milwaukee, St. Paul & Pacific, and are served indirectly by Chicago, Rock Island & Pacific and Chicago & North Western (Tr. 329); which afford direct routes to Chicago. Buffington, Indiana, is on the Elgin, Joliet & Eastern, and prior to December 10, 1931, the cement rate therefrom to Chicago was 6½ cents per hundred, with an 8-cent rate from LaSalle. This relationship, subjected to general advances and reductions since 1918, had prevailed for approximately 20 years. Effective December 10, 1931, pursuant to the Commission's decision in [fol. 1532] Docket 19610, the rate from Buffington, Indiana, to points in the Chicago switching district on cement was reduced to 3 cents, 3½ cents, 4 cents and 4½ cents respec-

tively, depending on the number of lines. January 4, 1932, pursuant to Ex Parte 103, the LaSalle rate was increased to 8.8 cents, and by reason thereof the spread between the Oglesby and Buffington rates to Chicago was increased from 1½ cents to 5.8 cents, 5.3 cents and 4.8 cents per hundred respectively, depending upon the number of lines employed from Buffington. (Tr. 330.) In Atlas Portland Cement Company v. Chicago, Burlington & Quincy, 81 I. C. C. 1, the Commission prescribed a mileage scale from Buffington to Illinois destinations, and from other interstate points to Illinois and Indiana destinations, and required the use of the scale on interstate traffic in both Indiana and Illinois, except from Buffington to Chicago and from LaSalle, Oglesby and Dixon, Illinois, to Chicago. From LaSalle to Chicago is 96 miles, and Buffington to Chicago 22 miles; the LaSalle mileage determines rates from Oglesby. This mileage scale produces, from LaSalle to Chicago, 9½ cents, and from Buffington to Chicago 7 cents per hundred weight, with a 2½ cent spread against LaSalle. (Tr. 331.) Chicago is the largest cement consuming market west of New York. Its requirements approximate those of the balance of Illinois. It is LaSalle's principal market. To all other points in the state the relationship is fixed by the Atlas scale; and while prior to the rates effective in Docket 19610, the spread between LaSalle and Buffington rates to Chicago was 1½ cents per hundred, as against 2½ cents under the scale, the spread today against LaSalle is 5.3 cents, 4.8 cents and 4.3 cents per hundred weight respectively, depending upon the number of lines used from Buffington. Cement is packed in cloth bags, 4 constituting 1 barrel weighing 380 pounds. (Tr. 332.) The maximum per barrel spread against [fol. 1533] LaSalle is 20 cents, and minimum 16 cents, compared with spread of 5.7 cents per barrel prior to December 10, 1931. The present spread is excessive and unwarranted by transportation conditions.

We appeared in Docket 19610 but presented no testimony because the investigation involved switching rates only, and the Commission in that case, with respect to the Elgin, Joliet & Eastern rate, said (p. 689): "That carrier is not a party to the Lowry Basis. It publishes only line haul rates, somewhat higher than the Lowry basis." (Tr. 332.)

The rate from Buffington to Chicago was not a switching rate, but a line haul commodity cement rate. Buffington, Indiana, while within the borders of the Chicago district,

was not in a tariff sense in the district. (Tr. 332.) Although the Elgin, Joliet & Eastern had never concurred in the Lowry switching district rates it, after the decision of the Commission in 19610, effective December 10, 1931, cancelled its line haul rates and published all-commodity switching rates prescribed in said docket for switching movements, which reduction was protested by the Marquette Cement Manufacturing Company but suspension was denied by the Commission. (Tr. 333.) Being intrastate shippers, the LaSalle mills cannot prosecute complaint before this Commission, testing the propriety of present relationships, and we appear here to protest against any further reduction in the Buffington-Chicago rate, and it is our position, should the Commission determine that the all-commodity rates prescribed by Docket 19610 are unreasonable, that the findings should exclude cement from Buffington to Chicago.

Mr. Davis: Understanding that the evidence of Mr. Gubernator is offered in Docket 24950, I move that all his testimony be stricken because not germane to the issues in this [fol. 1534] case, as he apparently deals with line haul rates from LaSalle to Chicago as against Buffington to Chicago.

The Witness: We contend it is a line haul rate and should never have been reduced and was not reduced by authority of Docket 19610, and would like to have a ruling, if there is to be one, because it was my purpose to leave Chicago tonight.

Examiner Faul: Docket 19610 was restricted to switching rates, and complaint 24950 is based on rates established as the result of 19610. This testimony may have an indirect bearing on the issues in 24950, but in receiving it we want to make clear that we are not going to open the door wide to the receipt of testimony which will refer to line haul movements. Because it might have an indirect bearing on the issues in 24950 we will receive the testimony. (Tr. 334-335.)

Cross-examination.

By Mr. Davis:

The scale in the Atlas Cement case fixed 9½¢ from the La Salle to Chicago. (Tr. 335.) This scale starts with 6½¢ for 5 miles and for 22 miles, 7¢, the distance from

Buffington to downtown Chicago. I think under the scale, 7½¢ applies for 30 miles. The Atlas case is reported 81 I. C. C., 1, which was docket No. 12,710. (Tr. 336.) The mileage scale applies to the distance calculated over 3 lines and in some cases, 5 lines, but generally it includes delivery at destination subject to all switching absorptions. (Tr. 337.) The distances are measured from station to station, but I do not say subject to the switching limits at every end. Under the scale, rates from Buffington were not measured from the Chicago District, but from Buffington, Indiana. The scale generally, throughout the territory applies station to station, each point having its own district within which switching rates are applied and absorbed. (Tr. 337.) Minimum revenue before absorption of switching charges varies but because a 6½¢ minimum rate is ap- [fol. 1535] plied to 50,000 pounds, makes minimum earnings $32.50. I do not know where minimum earnings before switching absorption run that high. (Tr. 339.)

Mr. Walter: In stating that the complainants rested, I should have said that as to witnesses interested in any particular commodity desiring to present testimony, we would be glad to produce them. We have some witnesses here, particularly from the Shell, Sinclair and Empire Oil Companies, but their testimony would add nothing to what has already been put in.

Mr. Davis: You rest again then, do you?

Mr. Walter: Yes.

Mr. Davis: I renew my motion made at the beginning, going to all witnesses and their evidence regarding anything other than Section 1 be stricken from the record as having no bearing on the issues in this formal complaint as the rates attacked were prescribed by the Commission in Docket No. 19,610 on the record made therein, becoming effective December 10, 1931, and in view of the record as made in the complaint case and my motion to strike the carriers will now rest on the record as made and will not introduce any evidence in the formal complaint. (Tr. 340.)

Examiner Faul: As stated at the outset, we have endeavored to keep these two cases, Section 13 feature in Docket No. 19,610, and this complaint No. 24,950 separate, one from the other and for that reason will now make the same ruling as made at the close of the hearing in Section 13 case, that separate briefs should be filed. (Tr. 341.)

Examiner Faul: This will be a proposed report case and briefs due from all parties July 8, 1932 and as there is nothing further the record in this case is closed at 4:05 o'clock P. M. May 30, 1932. (Tr. 343.)

[fol. 1536] In United States District Court

[Title omitted]

Certificate as to Abstract

State of Illinois,
Cook County, ss:

I hereby certify that I am a regular practicing attorney of Chicago Illinois, duly admitted to practice in the highest court of said state and duly admitted to practice in the District Court of the United States for the Northern District of Illinois; that pursuant to an order of said court, entered as of November 21, 1933, authorizing me to take from the files of said court in the above entitled cause, certain certified copies of the record of the proceedings before the Interstate Commerce Commission filed in the above entitled cause as exhibits and a part of the record therein for the purpose of abstracting, I have made an abstract of the proce-dings set forth in the said certified copies of the record of the proce-dings before the Interstate Commerce Commission in the following entitled causes before said Commission, which were consolidated for the purpose of hearing and heard upon one record to wit:

Docket No. 19610, being a general investigation instituted by the Interstate Commerce Commission on its own motion, entitled Switching Rates in the Chicago Switching District;

Investigation and suspension Docket No. 2900 entitled Switching Rates Between Points in the Chicago and Chicago Heights Districts, and

Docket No. 20006 entitled Illinois Slag & Ballast Co. vs. Chicago West Pullman & Southern Railroad Co., et al., and in addition, I have abstracted the record of the proceeding before the Interstate Commerce Commission as shown by the certified copy thereof and duly filed as an

exhibit and a part of the record in said above entitled cause, in the case of Acme Steel Company, et al., vs. the [fol. 1537] Atchison, Topeka & Santa Fe Railway Co., et al., Docket No. 24950 in which it was stipulated by the parties that the evidence in said proce-ding should be treated as evidence in Docket No. 19610 at the reopened hearing in said cause in so far as the same might be material to the issues in said proceeding and that the record and evidence taken in said reopened hearing in Docket No. 19610 should be treated as evidence in said Docket No. 24950 in so far as the evidence and testimony taken in said Docket 19610 might be material to the issues in Docket No. 24950. That the foregoing pages numbered 1 to 945 inclusive contain a full, true and complete abstract of the record before the Interstate Commerce Commission in said Dockets No. 19610, I. & S. Docket No. 2900, and Docket No. 20006 consolidated and sets forth in narrative form the oral testimony of each and every witness, sworn and examined in said cause, together with all objections to the testimony of said witnesses and the rulings thereon and exceptions thereto and all motions to strike and exclude testimony and requests for the production of testimony, the rulings thereon and exceptions thereto, and also shows all exhibits offered by the respective parties duly identified and received in evidence, together with all objections made to the admission of said exhibits, the rulings thereon and exceptions thereto, and also shows all exhibits offered and excluded with the objections ther-to, the rulings thereon and exceptions thereto; also all concessions, admissions and agreements of counsel as shown in said record; and in compliance with Rule 75 of the Supreme Court of the United States; and that the foregoing pages numbered from 1 to 113 contain a full, true and complete abstract of the record before the Interstate Commerce Commission in said Docket No. 24950, and sets forth in narrative form the oral testimony of each and every witness, sworn and examined in said cause, together with all objections to the testimony of [fols. 1538 & 1539] said witnesses and the rulings thereon and exceptions thereto and all motions and requests for the production of testimony, the rulings thereon and exceptions thereto and also shows all exhibits offered by the respective parties and received in evidence, together with all objections made to the admission of said exhibits, the

rulings thereon and exceptions thereto; also all concessions, admissions and agreements of counsel as shown in said record; and in compliance with rule 75 of the Supreme Court of the United States; except where impossible to properly abstract in narrative form, the gist of certain questions and answers, such questions and answers have been set out verbatim.

In testimony whereof, I have hereunto set my hand this 5th day of January, 1934.

William E. Lamb.

[fol. 1540] In United States District Court, Northern District of Illinois, Eastern Division

In Equity No. 13,507

Illinois Commerce Commission, Public Service Commission (of Indiana), Board of Trade of the City of Chicago, and Acme Steel Company, Plaintiffs,

vs.

United States of America, The Alton Railroad Company, The Atchison, Topeka and Santa Fe Railway Company, The Baltimore and Ohio Chicago Terminal Railroad Company, The Baltimore and Ohio Railroad Company, The Belt Railway Company of Chicago, The Chesapeake and Ohio Railway Company, Chicago and Calumet River Railroad Company, Chicago and Eastern Illinois Railway Company (Charles M. Thomson, Trustee), Chicago and Erie Railroad Company, Chicago and Illinois Western Railroad, Chicago and North Western Railway Company, Chicago and Western Indiana Railroad Company, Chicago, Aurora and Elgin Railroad Company (A. A. Sprague and Britton I. Budd, Receivers), Chicago, Burlington and Quincy Railroad Company, Chicago Great Western Railroad Company, Chicago, Indianapolis and Louisville Railway Company, Chicago Junction Railway (The Chicago River and Indiana Railroad Company, Lessee), Chicago, Milwaukee, St. Paul and Pacific Railroad Company, The Chicago River and Indiana Railroad Company, The Chicago, Rock Island and Pacific Railway Company, Chicago Short Line Railway Company, Chicago, South Shore and South Bend Railroad, Chicago,

West Pullman & Southern Railroad Company, Elgin, Joliet and Eastern Railway Company, Grand Trunk Western Railroad Company, Illinois Central Railroad Company, Illinois Northern Railway, Indiana Harbor Belt Railroad Company, Manufacturers' Junction Railway Company, The Michigan Central Railroad Company (The New York Central Railroad Company, Lessee), Minneapolis, St. Paul & Sault Ste. Marie Railway Company, The New York Central Railroad Company, The New York, Chicago and St. Louis Railroad Company, The Pennsylvania Railroad Company, Pere Marquette Railway Company, Pullman Railroad Company, Wabash Railway Company (Walter S. Franklin and Frank C. Nicodemus, Jr., Receivers), defendants

[fol. 1541]

Findings of Fact and Conclusions of Law—Nov. 3, 1933

This cause, having come on to be heard and the parties having appeared by their respective counsel and offered evidence in support of their respective contentions, and the court, having heard the arguments of counsel and being now fully advised in the premises, makes the following

Findings of Fact:

I

Plaintiff, Illinois Commerce Commission, is created by the laws of the State of Illinois and is charged with the duty of administering "An Act Concerning Public Utilities," approved June 29, 1921, as amended, hereinafter referred to as the Illinois Commerce Commission Law. Among other duties, the Illinois Commerce Commission is given general supervision of all public utilities, including railroads engaged in transportation between points within the State of Illinois, and also has the power to investigate existing or proposed interstate rates where any act in relation thereto shall take place within the State of Illinois, and is authorized to apply to the Interstate Commerce Commission by petition or otherwise or to any court of competent jurisdiction for relief.

Plaintiff, the Public Service Commission (of Indiana) is created by Chapter 93 of the Acts of the General As-

sembly of the State of Indiana for the year 1933, approved March 2, 1933, hereinafter referred to as Public Service Commission Act. Among other duties, the Public Service Commission (of Indiana) is given general supervision of all public utilities, including railroads engaged in transportation between points within the State of Indiana, and also has the power to investigate existing or proposed inter- [fol. 1542] state rates, where any act in relation thereto shall take place within the State of Indiana, and is authorized to apply to the Interstate Commerce Commission by petition or otherwise or to any court of competent jurisdiction for relief.

Plaintiff, Board of Trade of the City of Chicago, is a corporation organized and existing under the laws of the State of Illinois, the members of which are engaged in the purchase, manufacture and sale of grain and grain products.

Plaintiff, Acme Steel Company is a corporation organized and existing under the laws of the State of Illinois, engaged in the manufacture of steel articles, and joined in this suit on behalf of itself and fifty-seven other corporations, individuals and associations similarly situated, who were parties complainant in Docket 24950 before the Interstate Commerce Commission and all of whom were parties to the proceeding known as Docket 19610, and also on behalf of such other parties as might have a like interest in the subject matter hereof.

All plaintiffs are citizens of their respective states of incorporation, as above set forth.

II

The Alton Railroad Company; The Belt Railway Company of Chicago, Chicago and Calumet River Railroad Company; Chicago and Eastern Illinois Railway Company (Charles M. Thomson, Trustee in bankruptcy); Chicago & Illinois Western Railroad; Chicago and Western Indiana Railroad Company; Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railroad Company; Chicago Junction Railway (The Chicago River and Indiana Railroad Company, lessee); Chicago, West Pullman & Southern Railroad Company; Illinois Central Railroad Company; Illinois Northern Railway; and Pullman Railroad Company, are corporations organized and existing

under the laws of the State of Illinois, with their respective principal offices and places of business at Chicago, Illinois. [fol. 1543] The Atchison, Topeka and Santa Fe Railway Company is a corporation organized and existing under the laws of the State of Kansas, with principal offices and places of business at Topeka, Kansas, and Chicago, Illinois.

The Baltimore and Ohio Chicago Terminal Railroad Company is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business at Baltimore, Maryland.

The Baltimore and Ohio Railroad Company is a corporation organized and existing under the laws of the State of Maryland, with its principal operating office at Baltimore, Maryland.

The Chesapeake and Ohio Railway Company is a corporation organized and existing under the laws of the States of Virginia, West Virginia and Kentucky, with its principal office and place of business at Richmond, Virginia.

Chicago and Erie Railroad Company and Chicago, Indianapolis and Louisville Railway Company are corporations organized and existing under the laws of the State of Indiana, with their respective principal offices and places of business at Chicago, Illinois.

Chicago and North Western Railway Company is a corporation organized and existing under the laws of the States of Illinois, Wisconsin and Michigan, with its principal office and place of business at Chicago, Illinois.

Chicago, Aurora and Elgin Railroad Company (A. A. Sprague and Britton I. Budd, receivers), is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business at Aurora, Illinois.

[fol. 1544] Chicago, Milwaukee, St. Paul and Pacific Railroad Company is a corporation organized and existing under the laws of the State of Wisconsin, with its principal office and place of business at Chicago, Illinois.

The Chicago River and Indiana Railroad Company is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business at New York, New York, and Chicago, Illinois.

The Chicago, Rock Island and Pacific Railway Company is a corporation organized and existing under the laws of

the States of Illinois and Iowa, with its principal office and place of business at Chicago, Illinois.

Chicago Short Line Railway Company is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business at South Chicago, Illinois.

Chicago, South Shore and South Bend Railroad is a corporation organized and existing under the laws of the State of Indiana with its principal office and place of business at Michigan City, Indiana.

Elgin, Joliet and Eastern Railway Company is a corporation organized and existing under the laws of the States of Indiana and Illinois, with its principal office and place of business at Chicago, Illinois.

Grand Trunk Western Railroad Company is a corporation organized and existing under the laws of the States of Michigan and Indiana, with its principal office and place of business at Detroit, Michigan.

Indiana Harbor Belt Railroad Company is a corporation organized and existing under the laws of the State of Indiana, with its principal office and place of business at New York, New York.

[fol. 1545] Manufacturers' Junction Railway Company is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business at Cicero, Illinois.

The Michigan Central Railroad Company (The New York Central Railroad Company, lessee) and Pere Marquette Railway Company are corporations organized and existing under the laws of the State of Michigan, with their respective principal offices and places of business at Detroit, Michigan.

Minneapolis, St. Paul & Sault Ste. Marie Railway Company is a corporation organized and existing under the laws of the States of Michigan, Wisconsin and Minnesota, with its principal office and place of business at Minneapolis, Minnesota.

The New York Central Railroad Company is a consolidated corporation organized and existing under the laws of the States of New York, Pennsylvania, Ohio, Indiana, Michigan and Illinois, with its principal office and place of business at Albany, New York, and New York, New York.

The New York, Chicago and St. Louis Railroad Company

is a corporation organized and existing under the laws of the States of New York, Pennsylvania, Ohio, Indiana and Illinois, with its principal office and place of business at Cleveland, Ohio.

The Pennsylvania Railroad Company is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal operating office at Philadelphia, Pa.

Wabash Railway Company is a corporation organized and existing under the laws of the State of Indiana, with its principal operating office at St. Louis, Missouri. Walter. S. Franklin and Frank C. Nicodemus, Jr., are receivers of this property under order of the District Court of the United States for Eastern Distict of Missouri.

[fol. 1546] All of the corporate defendants above named are citizens of the states of their incorporation, owning and operating lines of railroad within the Chicago switching district in the State of Indiana and/or in the State of Illinois, and as such are engaged in the interstate transportation of property subject to the provisions of the Interstate Commerce Act, and are also engaged in the intrastate transportation of property within the State of Indiana and/or within the State of Illinois. The individuals above named are trustees and receivers, operating the lines of railroad under order of the District Courts of the United States and as such are suable under the provisions of the Interstate Commerce Act and related acts.

III

This is a suit brought pursuant to the provisions of Chapter 32 of the Urgent Deficiency Appropriations Act, approved October 22, 1913, to enjoin, set aside, annul, suspend and restrain the enforcement, operation and execution of an order of the Interstate Commerce Commission entered July 3, 1933, in its Docket 19610, Switching Rates in the Chicago Switching District, 195 I. C. C. 89, and to enjoin and restrain the defendants, other than the United States of America, from publishing, demanding, charging, collecting and/or receiving rates alleged to be authorized by the said order of the Interstate Commerce Commission; and to set aside and hold for naught any and all acts of said defendants, or any of them, performed and done under

or in alleged conformity with said order of the Interstate Commerce Commission, dated July 3, 1933.

[fol. 1547] IV

The Interstate Commerce Commission, in May, 1927, instituted a proceeding of inquiry and investigation into and concerning all rates and charges for the switching within the Chicago Switching District of all car load traffic moving in interstate commerce and their relation to like rates and charges for switching in intrastate commerce. The Illinois Commerce Commission and the Public Service Commission (of Indiana) were notified of said investigation and co-operated and sat with the Interstate Commerce Commission at the several hearings had in regard to said investigation, and there were several hearings before the Interstate Commerce Commission, the Illinois Commerce Commission and the Public Service Commission (of Indiana) sitting jointly for the purpose of hearing testimony and receiving evidence on the subject matter of the general investigation, in which proceedings the plaintiffs herein were parties. On July 31, 1931, a report and order of said Interstate Commerce Commission was entered (177 I. C. C. 669), a copy of which report and order is attached to the plaintiffs' bill of complaint and marked "Appendix A".

In said report and order the Interstate Commerce Commission approved, as maximum reasonable rates, the following rates for switching carload freight within the Chicago switching district, minimum weight 60,000 pounds per car; one-line hauls, 3 cents per hundred pounds; two-line hauls, 3.5 cents per hunderd pounds; and three-or-more-line hauls, 4 cents per hundred pounds. Said rates became effective on interstate traffic, except railway equipment on its own wheels, on December 10, 1931. The defendant railroad companies on September 10, 1931, filed with the Interstate Commerce Commission a motion or petition seeking appropriate findings and order authorizing and requiring them, upon the record as made in Docket 19610, to establish the same switching rates to apply intrastate in the [fol. 1548] Chicago switching district within Illinois and Indiana as were found lawful for interstate application in said district. Thereupon the Interstate Commerce Commission denied said petition in so far as it asked the making of such an order upon the record already made, but did

on November 2, 1931, reopen the proceedings in Docket 19610 for further hearing in respect of the relation of the rates and charges for switching in intrastate commerce to the rates prescribed for like switching in interstate commerce, for the purpose of determining whether the adjustment of the interstate and intrastate rates and charges was unduly prejudicial to interstate shippers and traffic and unjustly discriminatory against interstate commerce, in violation of Section 13 of the Interstate Commerce Act, with a view to the entry of such order or orders as might be necessary to correct such violation or violations, as might be found to exist.

On December 28, 1931, complaint was filed by the plaintiff Acme Steel Company, and fifty-seven other individuals, corporations and associations with the Interstate Commerce Commission, attacking the lawfulness of the said increased interstate switching rates which became effective on December 10, 1931, which said complaint was docketed as No. 24950. Thereafter defendant railroad corporations filed a motion to dismiss the said complaint without hearing, which motion was denied.

The said reopened Docket 19610 and the said complaint No. 24950 were assigned for hearing at the same time and place. The two cases were heard separately before examiners, but the said examiners issued a consolidated proposed report.

Thereafter exceptions were filed by the plaintiffs, oral argument was had, and the report and order of the Commission of July 3, 1933, was served on all the parties (195 I. C. C. 789). A copy of said report and order is attached to the plaintiffs' bill of complaint and marked "Exhibit C." (Tr. 1549) Said report and order authorize and require the defendant railroad corporations to establish for intrastate switching in the Chicago switching district within Illinois and within Indiana, the same rates as are contemporaneously applied to interstate switching of carload freight within the Chicago switching district.

VI

Thereafter, on August 15, 1933, the plaintiffs filed with the Interstate Commerce Commission their joint petition for reopening said proceedings in Dockets 19610 and 24950 for further hearing, for setting aside of the order of July 3, 1933, for reargument and or reconsideration of the said report and order of July 3, 1933, a copy of which petition is attached, to the plaintiffs' bill of complaint and marked "Appendix D." Said petition for reopening was denied on October 4, 1933.

Thereafter the defendant carriers filed their joint answer to said petition, dated August 24, 1933, a copy of which answer is attached to the plaintiffs' bill of complaint and marked "Appendix E."

Thereafter the plaintiffs filed their joint petition dated September 9, 1933, with the Interstate Commerce Commission, seeking the suspension of the tariffs of rates and charges purporting to be filed in compliance with the order of July 3, 1933, for the statutory period and for the institution of an investigation into the lawfulness of such proposed rates on intrastate traffic in Illinois and in Indiana within the Chicago switching district, and, in the alternative, for suspension of such tariffs for a period of not less than sixty days to permit careful consideration by the Interstate Commerce Commission of the petition above referred to, and also to permit an orderly consideration by any court of competent jurisdiction to which the validity of [fol. 1550] the order of July 3, 1933, might be submitted for determination, and for appropriate order postponing the effective date of the said order for a like period.

Thereafter, on September 9, 1933, the Interstate Commerce Commission entered its order postponing the effective date of said order for a period of thirty days and until October 20, 1933.

Said petition for suspension of said tariffs was denied on October 4, 1933.

VII

In conformity with said order of July 3, 1933, the defendant railroad carriers filed with the Interstate Commerce Commission their various tariffs, a list of which is attached to plaintiffs' bill of complaint and marked "Appendix I" by which tariffs the tariffs and schedules naming rates for

intrastate switching in Illinois, filed with the Illinois Commerce Commission, were canceled; also tariffs and schedules naming rates for intrastate switching in Indiana, within the Chicago switching district, filed with the Public Service Commission (of Indiana) were canceled, and other tariffs named in said appendix bearing an I. C. C. number were filed with the Interstate Commerce Commission, thereby making effective for intrastate switching in Indiana and for intrastate switching in Illinois, within the Chicago switching district, the same rates as were in effect for switching interstate traffic within the Chicago switching district, viz., 3 cents per hundred pounds for one-line hauls, 3.5 cents per hundred pounds for two-line hauls, and 4 cents per hundred pounds for three-or-more-line hauls, carload minimum 60,000 pounds, with certain exceptions thereinafter set forth.

[fol. 1551] VIII

A part of the evidence presented to the Interstate Commerce Commission in justification of the measure of what the rates within the Chicago switching district should in the hearing in Docket 19610, prior to the Commission's order of July 31, 1931, consisted of a cost study. Other evidence in addition to the cost study, was offered and received with respect to said switching rates both state and interstate within the Chicago switching district. The protestants in Docket 19610, and related cases, including the plaintiffs herein, offered evidence in opposition to the said cost study.

[fols. 1552 & 1553] And the court holds the following:

Propositions of Law

1. That the Interstate Commerce Commission's denial of plaintiffs' motions of January 28, and February 3, 1932, for a different cost study than that already made by the railroads did not constitute an abuse of discretion or denial of a full hearing.

2. That the order of the Interstate Commerce Commission of July 3, 1933, is supported by sufficient evidence.

3. That the order of the Interstate Commerce Commission of July 3, 1933, contains adequate findings of fact.

4. That the order of the Interstate Commerce Commission of July 3, 1933, is sufficiently definite and certain.

5. That the Interstate Commerce Commission has full power and authority to make its order of July 3, 1933, complained of.

6. That the Interstate Commerce Commission's denial of plaintiffs' petition of August 15, 1933, for reopening for further hearing, for setting aside of the order of July 3, 1933, for reargument and/or reconsideration, did not constitute an abuse of discretion or denial of a full hearing.

7. That the order of the Interstate Commerce Commission of July 3, 1933, complained of herein is a valid and subsisting order of said Commission.

8. That the plaintiffs' bill of complaint herein should be dismissed for want of equity, and that the defendants should recover their costs.

Dated at Chicago, Illinois, this 3rd day of November, 1933.

Albert B. Anderson, Circuit Judge. James H. Wilkerson, District Judge. John P. Barnes, District Judge.

[fols. 1554 & 1555] In United States District Court for the Eastern Division of the Northern District of Illinois

Equity. No. 13507

Illinois Commerce Commission et al., Plaintiffs,

vs.

United States of America et al., Defendants

Order Denying Injunction and Dismissing Bill of Complaint—Nov. 8, 1933

This cause came on to be heard on final hearing and was argued and briefed by counsel for the respective parties, and the Court being fully advised in the premises, and having filed its findings of fact and conclusions of law,

It is, this 8th day of November, 1933, Ordered, Adjudged, and Decreed that the prayer of the bill of complaint be, and the same is hereby denied, and that said bill be dismissed, and that defendants have their costs from plaintiffs.

A. B. Anderson, Circuit Judge. James H. Wilkerson, District Judge. John P. Barnes, District Judge.

[fol. 1556] In United States District Court.

[Title omitted]

Notice of Motion for Stay—Filed Nov. 15, 1933

To Elmer B. Collins, Special Assistant to the Attorney General; H. L. Underwood, Attorney for the Interstate Commerce Commission; and J. N. Davis, Solicitor for defendant carriers:

Please take notice that on Monday, November 13, 1933, at the opening of court, or as soon thereafter as counsel can be heard, in Judge Wilkerson's courtroom in the United States Court House, Chicago, Illinois, the undersigned, as solicitors for plaintiffs herein, will present the attached motion for stay of the order of the Interstate Commerce Commission of July 3, 1933, to the judges constituting the special District Court herein, and ask for the entry of a decree in accordance therewith.

Otto Kerner, Irvin Rooks, Harry R. Booth, Philip Lutz, Jr., Herbert J. Patrick, Herbert J. Campbell, Luther M. Walter, Solicitors for Plaintiffs.

Received a copy of the above notice, this 10th day of November, A. D., 1933, at 4:55 o'clock P. M.

J. N. Davis.

Rec'd copy of above Notice this 13th day of November. Elmer B. Collins, Solicitor for United States. H. L. Underwood, Solicitor for Interstate Com. Com.

[fol. 1557] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR STAY OF THE ORDER OF THE INTERSTATE COMMERCE COMMISSION DATED JULY 3, 1933, PENDING APPEAL TO THE SUPREME COURT—Filed Nov. 15, 1933

Now come plaintiffs herein, by their solicitors, and present this their motion for the entry of an order staying the effective date of the order of the Interstate Commerce Commission dated July 3, 1933, pending appeal to the Supreme Court, and in support thereof show as follows:

1. The rates authorized for intrastate switching in the Chicago switching district in Indiana and in Illinois of 3 cents, 3.5 cents and 4 cents, will become effective on November 20, 1933, unless stayed by an order of this court, and as a result thereof shippers will be compelled to pay an additional minimum amount per car for one-line service of $3.00; for two-line service of $6.00; and for three-or-more-line service of $6.00 per car. Plaintiff, Acme Steel Company, will be subjected to irreparable damage in the amount of such increased rates on many cars of freight switched intrastate in the Chicago switching district in the state of Illinois.

By reason of the interpretation made by the Supreme Court of the United States in the Arizona Grocery case, 284 U. S. 370; 76 L. Ed. 348, of the statute under which the Commission awards reparation, there is grave doubt that plaintiff, Acme Steel Company, and other shippers who, pending the appeal, pay the prescribed rates on intrastate traffic, if the order of the Commission finally should be annulled, will be able to recover back the amounts paid in excess of existing rates.

2. Novel and important questions are involved in the assignment of errors herein.

3. Public interest will not suffer in any manner by reason of the stay, nor will the revenues of the rail carriers be [fol. 1558] adversely affected for the reason that, if the rates become effective, the rail carriers will as the evidence indicates, lose business to other forms of transportation on

which the revenue is important, and may exceed the increase in earnings on such business as is retained by the rail carriers. Investments in necessary facilities such as loading and unloading platforms, vehicles, roadways, etc., will be made by shippers of intrastate traffic in the Chicago switching district, which will still further increase the volume of traffic diverted from rail carriers, and if the order be set aside, such shippers, having already made such investments, will continue to use other forms of transportation, even though the present intrastate rates be restored.

Various of the defendant rail carriers have, subsequent to the filing of the bill herein, filed petitions with the Interstate Commerce Commission seeking modification of the Interstate Commerce Commission's order of July 3, 1933, and relief from the rates approved by the Interstate Commerce Commission for application on intrastate traffic within the Chicago switching district, on the ground that the said rates are prohibitive and will reduce the revenue of the said carriers, to their great loss and damage. It was also alleged that as to the commodities covered by the application there had never been any movement to or from points via an interstate route; that no such routes were available on present traffic and that therefore there could be no discrimination as to persons, places and commodities as between interstate and intrastate commerce.

4. The status quo, viz: 2.5, 2.5 and 3 cent rates on intrastate traffic, has been in effect for many years, the matter has been under investigation by the Interstate Commerce Commission for several years, and as the statute requires expedition in the disposition of the appeal, justice requires that the status quo be maintained for the additional few months necessary for the determination of the case by the Supreme Court of the United States.

5. Plaintiff Acme Steel Company tenders bond for the payment of the increased revenue on such intrastate business as may be switched for it by the defendant railroad [fol. 1559] carriers during the pendency of the appeal, if it should finally be determined that the order of the Interstate Commerce Commission is valid.

Wherefore, plaintiffs respectfully move for the issue of an order staying the enforcement of the order of the Com-

mission of July 3, 1933, pending the appeal herein to the Supreme Court of the United States.

Otto Kerner, Attorney General of Illinois; Irvin Rooks, Harry R. Booth, Assistant Attorneys General of Illinois, Solicitors for Illinois Commerce Commission. Philip Lutz, Jr., Attorney General of Indiana; Herbert J. Patrick, Deputy Attorney General of Indiana, Solicitors for Public Service Commission (of Indiana); Herbert J. Campbell, Solicitor for Board of Trade of the City of Chicago. Luther M. Walter, Solicitor for Acme Steel Company.

[fols. 1560 & 1561] PETITIONERS' EXHIBIT 1

October 25, 1933.

Hon. George B. McGinty, Secretary, Interstate Commerce Commission, Washington, D. C.

Re Switching Rates in the Chicago Switching District, I. C. C. 19610. Petition of Chicago, West Pullman & Southern Railroad Company, Illinois Northern Railway and Illinois Central Railroad Company to Exempt Plant Refuse of no Commercial Value from 13th Section Order

DEAR SIR: I am forwarding herewith two signed originals and eighteen extra copies of the petition in the above entitled matter and request that said petition be filed and submitted to the Commission for consideration and decision.

Copies of said petition and of this letter have been served by mail on all parties to the record.

Yours very truly, Clifford H. Browder, J. T. Quisenberry, Attorneys for Chicago, West Pullman & Southern Railroad Company, Illinois Northern Railway, Illinois Central Railroad Company, 606 South Michigan Avenue, Chicago, Illinois.

[fol. 1562] BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket 19,610

Switching Rates in the Chicago Switching District

Petition of Chicago, West Pullman & Southern Railroad Company, Illinois Northern Railway, and Illinois Central Railroad Company for Modification of the Commission's 13th Section Order of July 3, 1933, Herein to Exempt Therefrom the Intrastate Carload Switching Rates on Plant Refuse of no Commercial Value Shipped from Points on the C. W. P. & S. R. R. and on the Illinois Northern Railway to Markham Yards, all Within the Chicago Switching District

Come now the Chicago, West Pullman & Southern Railroad Company, Illinois Northern Railway, and the Illinois Central Railroad Company, respondents in the above entitled proceeding, and respectfully petition the Commission to reopen and reconsider its 13th Section Decision and Order in this case and to exempt therefrom the intrastate carload switching rates on plant refuse of no commercial value shipped from points on the C. W. P. & S. R. R. and on the Illinois Northern Railway to Markham Yard of the [fol. 1563] Illinois Central Railroad within the Chicago Switching District. In support of said petition your applicants respectfully show:

1. The C. W. P. & S. R. R. and the Illinois Northern Railway are switching lines in Chicago, handling freight traffic exclusively. Such roads connect with numerous trunk lines, including the Illinois Central, which also engages in switching business in the Chicago District. All of said railroads are parties respondent in the above case and subject to the several orders of the Commission.

2. Both of said switching lines originate a considerable volume of refuse of no commercial value, which is transported to an undeveloped part of Markham Yard of the I. C. R. R. under the present intrastate all-commodity two-line interterminal switching rate of 2½¢ per 100, minimum 60,000 pounds, or $15 per car. Exact figures are not available on Illinois Northern traffic, but that from the C. W. P. & S. totals 20 to 30 cars weekly, the average loading being 90,000 pounds, while the average gross revenue thereon to

the C. W. P. & S. and the Illinois Central is $22.50 per car, or from $450, to $675 per week under the present rate of 2½¢ per 100. Refuse traffic from the Illinois Northern to the Illinois Central is similar to that from the C. W. P. & S., though somewhat less in volume.
[fol. 1564] No refuse has ever moved to or from points on these switching lines via interstate routes, and no such routes are available on the present traffic.

3. Under its order of July 3, 1933, your Honorable Body directed all switching lines to increase the intrastate all-commodity interterminal rates on one-line, two-line, and three-line traffic from 2½¢, 2½¢ and 3¢ per 100 respectively, to the interstate level of 3¢, 3½¢ and 4¢ per 100 pounds respectively, in order to remove unjust discrimination against interstate commerce found to have been caused by the lower state switching rates. This order directed the carriers to publish the new rates on or before September 20, 1933. On or about August 15th a petition was filed on behalf of the Illinois Commerce Commission and the Public Service Commission of Indiana, et al., for further hearing and for setting aside the order of July 3rd, and for reargument and reconsideration. Pending the disposition of this petition the Commission continued the effective date of its order from September 20, 1933, to October 20th of the same year.

On or about October 5, 1933, injunction proceedings were started in the U. S. District Court for the Northern District of Illinois (Eastern Division) to set aside and annul the Commission's order of July 3, 1933. This case has been argued, and pending decision, the Commission has further [fol. 1565] postponed the effective date of its order from October 20th to November 20, 1933.

4. Should said increased intrastate all-commodity rates become effective, the present two-line rate applicable to refuse handled from points on the C. W. P. & S. and the Illinois Northern to points on the Illinois Central, will be increased from 2½¢ per 100 to 3½¢ per 100, or an increase from $22.50 per car to $31.50 per car, based on the average loading of 90,000 pounds.

The C. W. P. & S. and its industries at Irondale, and the Illinois Northern and its industries adjoin or closely parallel navigable federal waters now used extensively by large

ships and barges. These railroads and plants are also crossed and/or fringed by numerous paved highways, which are not congested. Many industries now move refuse by motor truck and/or barge, and your petitioners believe that if the proposed rates become effective the carriers herein will lose this profitable refuse traffic to competitive forms of transportation. This, of course, should be averted if possible, for traffic once lost is difficult to regain.

5. Transportation conditions are favorable in the refuse traffic herein. The amount and regularity of the tonnage and revenue have already been discussed. The refuse concerned has no commercial value whatsoever and there is no risk to the carriers of loss, damage or delay, and said traffic [fol. 1566] may be handled, so far as the shippers are concerned, entirely at the convenience of the carriers.

6. A petition to exempt plant refuse from the level of interstate switching rates prescribed July 31, 1931 was filed in Docket 24,950 (consolidated with Docket 19,610) and was rejected by the Commission because "only intrastate movements are involved." (195 I. C. C. 89; 105.) No refuse has ever moved to or from points on the C. W. P. & S. and the Illinois Northern Railway via interstate routes, and no such routes are available on the present traffic. Hence there can be no discrimination as to persons, places, and commodities as between interstate and intrastate commerce. For this reason we feel that the Commission probably intended to and should in fact exempt all refuse of no commercial value from its 13th Section Order in Docket 19,610.

7. One of the primary purposes of the above 13th Section Order hearing was to insure that intrastate traffic will contribute its just and fair share to the maintenance of the general transportation system and not constitute a burden upon interstate commerce. If, however, your petitioners are compelled to increase the two-line intrastate rates on plant refuse from 2½¢ (present) to 3½¢ (proposed all-commodity rate) per 100, minimum 60,000 pounds, the above purpose of the 13th Section Order with respect to this particular traffic will be defeated by the loss of the [fol. 1567] traffic and a substantial reduction in the net revenues of the petitioners, and this will increase rather than diminish the burden upon interstate commerce.

8. Under the circumstances, no further hearing with respect to the refuse traffic herein and the rates thereon seems necessary or desirable.

Wherefore, your petitioners pray that your Honorable Body take jurisdiction of the subject matter herein and reopen and reconsider and modify the 13th Section decision and order herein, and exempt therefrom the intrastate carload switching rates on plant refuse of no commercial value shipped from points on the C. W. P. & S. R. R. and on the Illinois Northern Railway to points on the Illinois Central Railroad in such switching district, and that the Commission enter such further order or orders as to it may seem reasonable and just.

Dated at Chicago, Illinois, this 25th day of October, 1933.

Respectfully submitted, Chicago, West Pullman & Southern Railroad Company, by T. J. Maloney, President, 606 South Michigan Avenue, Chicago, Illinois. Illinois Northern Railway, by T. J. Maloney, President, 606 South Michigan Avenue, Chi-
[fol. 1568] cago, Illinois. Illinois Central Railroad, by C. C. Cameron, Vice-President, 12th Street and Michigan Boulevard, Chicago, Illinois. Clifford H. Browder, J. T. Quisenberry, Attorneys for Petitioners, 606 South Michigan Avenue, Chicago, Illinois.

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each other party.

Dated at Chicago, Illinois, this 25th day of October, 1933.

Clifford H. Browder, Attorney for Petitioners.

[fol. 1569] PETITIONERS' EXHIBIT 2

706913

Chicago, Ill., September 26, 1933.

To the Interstate Commerce Commission, Washington, D. C.:

The Chicago Junction Railway (The Chicago River & Indiana Railroad Company, Lessee) by LeRoy Blue, its

General Freight Agent, does hereby respectfully petition the Interstate Commerce Commission, that it be permitted under Section 6 of the Interstate Commerce Act, as amended, to put in force the rates set forth in this petition to become effective one day after the filing thereof with the Interstate Commerce Commission. Your petitioner bases such request upon the following facts which present certain special circumstances and conditions justifying the request herein made:

This commission in its decision in Docket 19610, Switching Rates in Chicago Switching District, 177 I. C. C. 669, found that rates of 3 cents per 100 pounds for 1-line hauls, 3½ cents for 2-line hauls, and 4 cents for 3 or more-line hauls, carload minimum 60,000 pounds, within the Chicago switching district would not be unreasonable for the future application on all of the commodities switched within the district, except railway equipment on its own wheels, and in the order issued therein required that respondents accordingly as they participate in the transportation establish on or before November 10, 1931, upon statutory notice and thereafter maintain and apply to the interstate transportation of all commodities in carloads in switching service as described in the report, except railway equipment on its own wheels, between all points in the Chicago switching district, rates, charges and minimum weights not in excess of those found by the Commission in its said report to be reasonable.

The local traffic or 1-line hauls of your petitioner is specifically dealt with in the following excerpt from pages 696 and 697 of said report:

"Packing-house products. This testimony dealt almost exclusively with the short hauls within the stockyards district over the Chicago Junction Railway, which has divided its line into districts. Within those districts are located points between which there are movements of certain commodities. That carrier was not selected as one of the cost study roads. Its movements, all intrastate, range from 200 feet to a mile. The preponderance of the movement is in privately owned refrigerator cars, usually loaded in both directions, for which an indirect allowance is made by way of difference in the switching charges as between carrier and private cars. It was pointed out that the number of

cars owned by the Chicago Junction is inadequate to handle the business and without the use of those private cars the carrier would necessarily incur a per diem charge of $1 per car for the use of foreign cars. The table below, compiled from one of the shippers' exhibits, shows the present charges applying on this line for both interdistrict and intradistrict movements:

	Intradistrict	Interdistrict
Chicago Junction cars		
Loaded	$3.15	(1)
Empty	3.15	$4.50
Private Cars:		
Loaded	3.15	12.00
Empty	3.15	4.50

(1) 2.5 cents, minimum 60,000 pounds

While the record is not entirely clear, the Chicago Junction apparently proposes to increase all of its rates to the Lowrey basis, except that it desires to continue the present [fol. 1571] charges of $3.15 and $7.15 per car for intradistrict movements. The charges of $12 and $15 per car for interdistrict movements would be increased to $18 under the proposed rate of 3 cents, minimum 60,000 pounds. As the actual hanging loads weigh 25,000 pounds and the floor loads 35,000 pounds, the increase to $18 per car would, in fact, result in increasing the rates to 7.2 cents and 5.1 cents per 100 pounds for the comparatively short 1-line hauls referred to above.

In view of the nature of these movements, most of which are purely intraplant, and all intrastate in character, over comparatively short hauls, they can not be considered as representative of the movements in general throughout the district. We accordingly make no findings as to this particular traffic."

In view of the fact that all of the one-line hauls performed by your petitioner are intrastate in character as stated in the report and as no findings were made as to this particular traffic the order issued therein required no change in the rates applicable thereon, and therefore, such rates were not subjected to increases as were the interstate rates for 2-line and 3-or more-line hauls.

In a supplemental report in said proceedings, Docket 19610, et al., (mimeographed), dated July 3, 1933, the Commission found that the maintenance of intrastate switching rates and carload minimum weights in Illinois and Indiana between points within the Chicago switching district for 1-line, 2-line, and 3-or-more-line movement on a lower basis than the corresponding all-commodity rates and minimum weights for 1-line, 2-line, and 3-or-more-line movements found not unreasonable and approved for interstate transportation in switching service had not been shown to have caused or to cause any undue preference and advantage of persons or localities in intrastate commerce, or any undue prejudice and disadvantage to persons or localities in inter-[fol. 1572] state commerce, but that the maintenance of such lower intrastate rates results, and will for the future result in undue discrimination against interstate commerce.

The order issued in connection with said supplemental report in part reads as follows:

"And it appearing, That the respondent carriers parties hereto having published all-commodity 1-line, 2-line and 3-or more-line switching rates and minimum weights for application to interstate transportation in switching service in the Chicago switching district which comply with the Commission's findings in the prior report in Docket No. 19610, Switching Rates in Chicago District, 177 I. C. C. 669, but continue to publish for intrastate application to similar traffic in 1-line, 2-line, and 3-or more-line movements in the Chicago switching district within the States of Illinois and Indiana switching rates and minimum weights which are upon a substantially lower basis:

It is ordered, That respondents herein, according as they participate in the transportation be, and they are hereby, notified and required to cease and desist on or before September 20, 1933, from practicing the unjust discrimination found in said report to exist in relation of interstate and intrastate all-commodity switching rates and charges for transportation in switching service in the Chicago switching district within the states of Illinois and Indiana.

It is further ordered, That said respondents according as they participate in the transportation be, and they are hereby, notified and required to establish on or before Sep-

tember 20, 1933, and thereafter to maintain switching rates [fol. 1573] and charges on all-commodity basis for switching service in intrastate commerce in the Chicago Switching district within the states of Illinois and Indiana which shall be not less than the rates contemporaneously applied by said carriers to the transportation by them of all-commodities in interstate switching service between points in the Chicago switching district in the states of Illinois and Indiana."

At sheet 32 of the supplemental report reference is made to the criticism offered by certain protestants for the failure to include in the cost study the 1-line hauls of your petitioner and in a foot note the following statement appears:

"In view of the nature of these movements, most of which are purely intraplant, and all intrastate in character, over comparatively short hauls, they can not be considered as representative of the movements in general throughout the district, we accordingly make no findings as to this particular traffic."

In view of the above statement by the Commission in both the original and supplemental reports and the fact that your petitioner had made no increases in its 1-line haul rates following the issuance of the original order covering interstate traffic, it was questionable whether your petitioner was required or authorized by the supplemental order to increase its 1-line haul rates applicable on intrastate traffic, but after careful consideration and in order that it might not be charged with being in contempt of the order, a tariff, Chicago Junction Railway (The Chicago River & Indiana Railroad Company, Lessee), I. C. C. C. J. No. 53 was published and filed to become effective September 20, 1933 (later postponed to October 20, 1933), cancelling C. J. Ry. Tariff No. 22 M, I. C. C. C. J. No. 44 and C. J. Ry. Tariff No. 25 C, I. C. C. C. J. No. 2, and increasing all of its interdistrict 1-line haul rates to the basis found [fol. 1574] reasonable and approved for interstate traffic in the original decision. No change was made, however, in its intradistrict 1-line haul rates which as found by the Commission at page 697 of the original report are mostly purely intraplant movements.

The Commission now has before it a petition filed by certain shippers protesting against the action of your petitioner and certain other respondents in failing to make the all-commodity rate basis applicable on all traffic within the switching district and seeking to have the order set aside or modified in whole or in part. As a result of said petition it is expected that the Commission will clarify its order so that there may be no question as to what traffic is included therein and what traffic, if any, is excluded therefrom, and your petitioner, therefore, requests that it be granted authority under section 6 of the act to amend its tariffs to the extent necessary to place them in strict conformity with the order as construed by the Commission.

The authority which your petitioner herein seeks is as follows:

In the event the Commission construes its opinions and orders as not to include the 1-line haul rates of the Chicago Junction, your petitioner requests permission to file a supplement to Chicago Junction Railway (The Chicago River & Indiana Railroad Company, lessee), I. C. C. C. J. 53, re-establishing therein on one day's notice effective October 20, 1933, the local and proportional switching rates now contained in Chicago Junction Railway (The Chicago River & Indiana Railroad Company, lessee), Tariff No. 22 M, I. C. C. C. J. No. 44, under Items Nos. 125, 130, 131, 140 and 145 on page 6 thereof. Also to file a tariff re establishing a rate of $7.65 per car on Manufacturing Plant [fol. 1575] Refuse between industries, team tracks and connecting lines now contained in Chicago Junction Railway (The Chicago River & Indiana Railroad Company, lessee) Tariff No. 25-C, I. C. C. C. J. No. 2.

Your petitioner further represents that in the event the above request is granted the said rates above mentioned will be published in Chicago Junction Railway Freight Tariff No. 25-D, I. C. C. C. J. No. 55, and supplement No. 2 to Chicago Junction Ry. Tariff No. 22-N, I. C. C. C. J. No. 53, both to become effective October 20, 1933, and will supersede and take the place of the rates on like traffic between the same points which are set forth in Chicago Junction Railway (The Chicago River & Indiana Railroad

Company, lessee) Tariff No. 22-N, I. C. C. C. J. No. 53, on file with the Commission.

Chicago Junction Railway (The Chicago River & Indiana Railroad Company, Lessee), by Leroy Blue, Its General Freight Agent.

Subscribed and sworn to before me this 26th day of Sept., 1933. H. C. Christensen, Notary Public. My commission expires Sept. 9, 1937. (Notary Seal.)

[fols. 1576 & 1577] PETITIONER'S EXHIBIT 3

Rates in Cents per 100 Pounds, Minimum Weight 60,000 Pounds (Except as Noted)

	(1) CJ ICC 44		(2) CJ ICC 53	
	Inter-District.	Intra-District.	Inter-District.	Intra-District.
All carload freight except coal	2½	⁂715	3	⁂715
Coal	1½	⁂715	3	⁂715
Empty freight cars	⁂450	⁂315	⁂450	⁂315
Bituminous coal on which the C. J. has had a previous switch haul, reloaded from coal storage yards for movement to consuming plants located on C. J.	*1	*1	3	3
All freight (except coal, grain and grain screenings) between junctions with connecting lines and industries and team tracks	2	2	3	3
Between junctions with connecting lines and industries: Coal	1½	1½	3	3
Grain and grain screenings to industries	⁂495	⁂495	3	3
Grain and grain screenings from industries	⁂675	⁂675	3	3

⁂ Cents per car of any weight.
* Minimum weight 80,000 pounds.
(1) Items 125, 130, 131, 140, 145.
(2) Items 125, 130, 140.

[fol. 1578] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING MOTION FOR STAY OF ORDER OF THE INTERSTATE COMMERCE COMMISSION, DATED JULY 3, 1933, PENDING APPEAL TO THE SUPREME COURT AND REQUIRING DEFENDANT CARRIERS TO PRESERVE AND ACCOUNT FOR ALL AMOUNTS RECEIVED BY THEM BY VIRTUE OF SAID ORDER OF THE INTERSTATE COMMERCE COMMISSION—NOV. 15, 1933

This cause coming on to be heard on motion of plaintiffs for the entry of an order staying the effective date of the order of the Interstate Commerce Commission, dated July 3, 1933, as set forth in the bill of complaint in the above entitled cause, pending appeal to the Supreme Court of the United States from the final order and decree of this Court dismissing said bill of complaint for want of equity, and the Court having heard the evidence adduced by plaintiffs and the arguments of counsel upon the hearing of this motion, and being fully advised in the premises, finds that said application should be denied.

The Court further finds that the defendant carriers, and each of them, should keep accurate account in detail of all amounts received by them by reason of the increases in the rates as authorized and required by said order of the Interstate Commerce Commission, dated July 3, 1933, specifying [fols. 1579 & 1580] by whom or in whose behalf such increases are paid, pending the final determination of this cause, and if upon the final determination of this cause the said order of the Interstate Commerce Commission shall be set aside or annulled, the said defendant carriers, and each of them, shall refund such increases with interest, to the persons by whom, or in whose behalf, such amounts were paid by reason of the increases in the rates as authorized and required by said order of the Interstate Commerce Commission, of July 3, 1933.

It is therefore ordered, adjudged, and decreed, this 15th day of November, 1933, that said motion of plaintiffs for stay of said order of the Interstate Commerce Commission, dated July 3, 1933, pending appeal to the Supreme Court of the United States, be, and the same is hereby denied.

It is further Ordered, Adjudged and Decreed, that the defendant carriers, and each of them, shall keep accurate

account in detail of all amounts received by them by reason of the increases in the rates as authorized and required by said order of the Interstate Commerce Commission, dated July 3, 1933, specifying by whom, or in whose behalf, such increases are paid, pending the final determination of this cause, and if upon the final determination of this cause the said order of the Interstate Commerce Commission shall be set aside or annulled, the said defendant carriers, and each of them, shall refund such increases, with interest, to the persons by whom, or in whose behalf, such amounts were paid by reason of the increases in the rates as authorized and required by said order of the Interstate Commerce Commission, of July 3, 1933.

Albert B. Anderson, Circuit Judge. James H. Wilkerson, District Judge. John P. Barnes, District Judge.

[fols. 1581 & 1582] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed Nov. 16, 1933

Illinois Commerce Commission, Public Service Commission (of Indiana), Board of Trade of the City of Chicago, and Acme Steel Company, plaintiffs, feeling themselves aggrieved by the final order or decree of the United States District Court for the Northern District of Illinois, Eastern Division, dated November 8, 1933, which denied the relief sought and dismissed the bill, pray an appeal therefrom to the Supreme Court of the United States, for the reasons set forth in the assignment of errors filed herewith. They pray that their appeal be allowed and that citation be issued as provided by law, and that the transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States, and, desiring to supersede the order of this Court of November 8, 1933, denying the plaintiffs' request for an injunction restraining and suspending the enforcement, operation and execution of the order of the Interstate Commerce Commission complained of herein, petitioners here tender bond in such amount as the Court may require for such purpose and

pray that with the allowance of the appeal a supersedeas be issued.

Otto Kerner, Attorney General of Illinois; Irvin Rooks, Harry R. Booth, Assistant Attorneys General of Illinois, Solicitors for Illinois Commerce Commission. Philip Lutz, Jr., Attorney General of Indiana; Herbert J. Patrick, Deputy Attorney General of Indiana, Solicitors for Public Service Commission (of Indiana). Herbert J. Campbell, Solicitor for Board of Trade of the City of Chicago. Luther M. Walter, Solicitor for Acme Steel Company.

[fols. 1583 & 1584] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING APPEAL—Nov. 16, 1933

Plaintiffs, having filed their petition for appeal herein, same is hereby granted and the plaintiffs are hereby allowed to appeal said case, and

It is ordered, that said appeal be and the same is hereby entered to the Supreme Court of the United States upon the filing of a bond by the said plaintiffs in the sum of One Thousand ($1,000.00) Dollars, with good and sufficient surety to be approved by this Court, conditioned upon said plaintiffs prosecuting their appeal to effect, and answering all costs if they fail to make their appeal good. Plaintiffs' request for supersedeas is hereby denied.

Dated this 16th day of November, 1933.

—— ——, United States Circuit Judge. James H. Wilkerson, United States District Judge. John P. Barnes, United States District Judge.

[fol. 1585] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed Nov. 16, 1933

Illinois Commerce Commission, Public Service Commission (of Indiana), Board of Trade of the City of Chicago,

and Acme Steel Company, plaintiffs herein, by their respective counsel, now come, and, in connection with their petition for appeal, file the following Assignments of Error on which they will rely on their appeal to the Supreme Court of the United States from the final order or decree of the District Court, herein, dated and entered November 8, 1933.

The Court erred:

1. In dismissing the bill of complaint.

2. In finding that the Interstate Commerce Commission's denial of plaintiffs' motions of January 28 and February 3, 1932, for a different cost study than that already made by the railroads did not constitute an abuse of discretion or denial of a full hearing.

3. In finding that the order of the Interstate Commerce Commission of July 3, 1933, is supported by sufficient evidence.

4. In finding that the order of the Interstate Commerce Commission of July 3, 1933, contains adequate findings of fact.

5. In finding that the order of the Interstate Commerce Commission of July 3, 1933, is sufficiently definite and certain.

6. In finding that the Interstate Commerce Commission had full power and authority to make its order of July 3, 1933, complained of.

7. In finding that the Interstate Commerce Commission's denial of plaintiffs' petition of August 15, 1933, for reopening for further hearing, for setting aside of the order of July 3, 1933, for reargument and/or reconsideration, did [fols. 1586 & 1587] not constitute an abuse of discretion or denial of a full hearing.

8. In finding that the order of the Interstate Commerce Commission of July 3, 1933, complained of herein is a valid and subsisting order of said Commission.

9. In denying plaintiffs' motion for an order staying the effective date of the order of the Interstate Commerce Commission of July 3, 1933, pending the appeal to the Supreme Court of the United States.

10. In failing to find the facts specially and to state separately its conclusions of law thereon as required by Equity Rule 70½.

11. In failing to enjoin, annul and set aside the order of the Interstate Commerce Commission of July 3, 1933.

Wherefore, complainants and each of them pray that the final order and decree of the District Court, dated and entered November 8, 1933, be set aside and that they be granted relief as prayed in their original petition.

Otto Kerner, Attorney General of Illinois; Irvin Rooks, Harry R. Booth, Assistant Attorneys General of Illinois, Solicitors for Illinois Commerce Commission. Philip Lutz, Jr., Attorney General of Indiana; Herbert J. Patrick, Deputy Attorney General of Indiana, Solicitors for Public Service Commission (of Indiana). Herbert J. Campbell, Solicitor for Board of Trade of the City of Chicago. Luther M. Walter, Solicitor for Acme Steel Company.

[fols. 1588-1590] Bond of Acme Steel Company on appeal for $1,000.00, approved and filed Nov. 21, 1933, omitted in printing.

[fols. 1591 & 1592] IN UNITED STATES DISTRICT COURT.

[Title omitted]

ORDER PERMITTING WITHDRAWAL OF TRANSCRIPT OF TESTIMONY FOR PURPOSE OF ABSTRACTING SAME—NOV. 21, 1933

On application of counsel for plaintiff, Acme Steel Company, for leave to withdraw from the Clerk's office the transcript of evidence in Interstate Commerce Commission Dockets 19610 and 24950, in order that abstract of record may be prepared, in accordance with Equity Rule No. 75,

It is ordered that the transcript of evidence and exhibits in said numbered dockets before the Interstate Commerce

Commission, filed as part of the record herein, under the certificate of the secretary of the Interstate Commerce Commission, may be removed and kept in the custody of William E. Lamb, an attorney and officer of this Court, during the reasonable time necessary to reduce the same to the form required by said rule.

Dated at Chicago, November 21, 1933.

James H. Wilkerson, District Judge.

[fol. 1593] In United States District Court

[Title omitted]

Order Modifying Order Dated November 15, 1933, Denying Motion for Stay of Order of the Interstate Commerce Commission, Dated July 3, 1933—Nov. 21, 1933

This cause coming on to be heard on motion of plaintiffs for the entry of an order modifying the order of this Court heretofore entered on November 15, 1933, denying the motion of plaintiffs for the entry of an order staying the effective date of the order of the Interstate Commerce Commission dated July 3, 1933, as set forth in the bill of complaint in the above-entitled cause pending appeal to the Supreme Court of the United States from the final judgment and decree of this Court dismissing said bill of complaint for want of equity, and the Court having heard the arguments of counsel upon the hearing of this motion for modification of said order and being fully advised in the premises finds that said order heretofore entered on the 15th day of November, 1933, should be modified so as to require Charles M. Thomson as Trustee of the property of Chicago and Eastern Illinois Railway Company and The Chicago, Rock Island & Pacific Railway Company, as principals, to make, execute and deliver to the Clerk of this Court indemnity bonds in the sums of Ten Thousand Dollars ($10,000.00) and Fifteen Thousand Dollars ($15,000.00), respectively, with such surety or sureties as shall be approved by the Clerk of this Court for the use and benefit of all persons by whom or on whose behalf the intrastate rates, as required by the said order of the Intrastate Commerce Commission dated July 3, 1933,

more particularly referred to in said order of this Court, dated the 15th day of November, 1933, are paid to said Charles M. Thomson, as Trustee and to The Chicago, Rock Island & Pacific Railway Company, respectively, pending [to 1544] appeal to the Supreme Court of the United States from the final order and decree of this Court dismissing said bill of complaint for want of equity. Each of said bonds shall be upon the condition that, if the said order of the Interstate Commerce Commission shall be set aside and annulled and if, in that event, the Principal in said bond shall refund the increases in said rates directed by said order of the Interstate Commerce Commission, with interest, to the persons by whom or in whose behalf said amounts were or are paid to said Principal, or if said order of the Interstate Commerce Commission shall not be set aside and annulled by the Supreme Court of the United States, upon final disposition of this cause, the obligation of the bond is to be void, but that, in the event said order of the Interstate Commerce Commission is set aside or annulled by the Supreme Court of the United States in this cause and the said Principal fails to make refunds as aforesaid, the bond is to remain in full force and effect.

It is therefore ordered, adjudged and decreed this 28th day of November, 1933, that said order heretofore entered in this Court on the 15th day of November, 1933, shall be and said order is hereby modified as follows:

Charles M. Thomson, as Trustee of the Estate of Chicago and Eastern Illinois Railway Company and The Chicago, Rock Island & Pacific Railway Company are hereby required and directed within ten (10) days from the date of the entry of this order to make, execute and deliver to the Clerk of this Court bonds in the sums of Ten Thousand Dollars ($10,000.00) and Fifteen Thousand Dollars ($15,000.00), respectively, with such surety or sureties as shall be approved by the Clerk of this Court for the use and benefit of all persons by whom or on whose behalf the increases in the rates, as required by the said order of the Interstate Commerce Commission, dated [illegible], 1933, and more particularly referred to in said order of this Court dated the 15th day of November, 1933, are paid to said Charles M. Thomson, as Trustee, and to The Chicago, Rock Island & Pacific Railway Company, respectively, pending appeal to the Supreme Court of the United States

[fols. 1595 & 1596] from the final order and decree of this Court dismissing said bill of complaint for want of equity. Each of said bonds shall be upon the condition that, if the said order of the Interstate Commerce Commission shall be set aside and annulled and if, in that event, the Principal in said bond shall refund the increases in said rates directed by said order of the Interstate Commerce Commission, with interest, to the persons by whom or in whose behalf such amounts were or are paid to said Principal, or if said order of the Interstate Commerce Commission shall not be set aside and annulled by the Supreme Court of the United States, upon final disposition of this cause, the obligation of the bond is to be void, but that, in the event said order of the Interstate Commerce Commission is set aside or annulled by the Supreme Court of the United States in this cause and the said Principal fails to make refunds as aforesaid, the bond is to remain in full force and effect.

Circuit Judge. (Sgd.) James H. Wilkerson, District Judge. (Sgd.) John P. Barnes, District Judge.

[fol. 1597] In United States District Court

[Title omitted]

Order Enlarging Time Within Which to Docket Case and File a Record Thereof. Nov. 28, 1933.

It appearing that further time is required to reduce to narrative statement the testimony and exhibits contained in the voluminous transcript of the record of the evidence and proceedings before the Interstate Commerce Commission, now a part of the record before this Court, and to assemble, prepare and certify the transcript of record of this Court on the Appeal and for other good cause shown:

It is ordered, that the time in which the Illinois Commerce Commission, Public Service Commission of Indiana, Board of Trade of the City of Chicago, and Acme Steel Company, plaintiffs, shall furnish, serve and file in the office of the Clerk of the District Court their narrative statement of the evidence offered before the District Court and in which to cause the transcript of the record to be completed, and in which to docket the case and file the record

thereof with the Clerk of the Supreme Court of the United States, be, and it is hereby, enlarged to and including the 31 day of December, 1933.

——— ———, Circuit Judge. James H. Wilkerson, District Judge. John P. Barnes, District Judge.

[fols. 1598 & 1599] Dated ——— ———, ———.

The entry of the foregoing order enlarging the time within which to docket the case and file the record hereof is hereby consented to.

———, Solicitor for United States of America. H. L. Underwood, by Charles M. Bates, Clerk, Solicitor for Interstate Commerce Commission. James Stillwell, Solicitor for Railroad Defendants.

[fol. 1600] In United States District Court

[Title omitted]

Order Further Enlarging Time Within Which to Docket Case and File a Record Thereof—Dec. 27, 1933

It appearing that further time is required to reduce to narrative statement the testimony and exhibits contained in the voluminous transcript of the record of the evidence and proceedings before the Interstate Commerce Commission, now a part of the record before this Court, and to assemble, prepare and certify the transcript of record of this Court on the Appeal, and for other good cause shown;

It is ordered, that the time in which the Illinois Commerce Commission, Public Service Commission (of Indiana), Board of Trade of the City of Chicago, and Acme Steel Company, plaintiffs, shall furnish, serve and file in the office of the Clerk of the District Court their narrative statement of the evidence offered before the District Court and in which to cause the transcript of the record to be completed, and in which to docket the case and file the [fols. 1601 & 1602] record thereof with the Clerk of the Supreme Court of the United States, be, and it is hereby, further enlarged to and including the 31 day of January, 1934.

———, Circuit Judge. James H. Wilkerson, District Judge. ———, District Judge.

Dated December 27, 1933.

The entry of the foregoing order further enlarging the time within which to docket the case and file the record thereof is hereby consented to.

_____, Solicitor for United States of America.
H. L. Underwood, per L. M. Bates, Solicitor for Interstate Commerce Commission.
_____, Solicitor for Railroad Defendants.

[fol. 1603] In United States District Court

[Title omitted]

Order Further Enlarging Time Within Which to Docket Case and File a Record Thereon — Jan. 26, 1934

It appearing that the parties and their counsel are distant and that further time is required to reduce to narrative statement the testimony and exhibits contained in the voluminous transcript of the record of the evidence and proceedings before the Interstate Commerce Commission, now a part of the record before this Court, and to assemble, prepare and certify the transcript of record of this Court on the Appeal, and for other good cause shown;

It is ordered, that the time in which the Illinois Commerce Commission, Public Service Commission (of Indiana), Board of Trade of the City of Chicago, and Acme Steel Company, plaintiffs, shall furnish, serve and file in the office of the Clerk of the District Court their narrative statement of the evidence offered before the District Court and in which to cause the transcript of the record to be completed, and in which to docket the case and file the record thereof with the Clerk of the Supreme Court of the United States, be, and it is hereby further enlarged to and including the 28th day of February, 1934.

_____, Circuit Judge. _____, District Judge.
John P. Barnes, District Judge.

[fols. 1604 & 1605] Dated January 26, 1934

The entry of the foregoing order further enlarging the time within which to docket the case and file the record thereof is hereby consented to.

Elmer B. Collins, Solicitor for the United States of America. H. L. Underwood, Solicitor for Interstate Commerce Commission. J. N. Davis, Solicitor for Railroad Defendants.

[fols. 1606 & 1607] In United States District Court

[Title omitted]

Waiver of Notice Under Rule 75, and Consent to Approval of Narrative Statement—Feb. 12, 1934

We, the undersigned, solicitors for the defendants, and for intervening defendant, Interstate Commerce Commission, hereby waive the notice provided for in Rule 75 of the Rules of Courts of Equity of the United States as to notice of the lodgment of the narrative statement of the evidence and consent that said narrative statement may be approved by the Court as a part of the record for the purposes of the appeal.

Elmer B. Collins, Solicitor for the United States of America. J. N. Davis, Solicitor for Defendant railroad companies. Daniel W. Knowlton, Solicitor for the Interstate Commerce Commission.

[fols. 1608 & 1609] In United States District Court

[Title omitted]

Order Approving Narrative Abstract of Transcript of Record—Feb. 12, 1934

It appearing that solicitors for plaintiffs have reduced the transcript of evidence before the Interstate Commerce Commission to narrative form in accordance with the requirements of Equity Rule 75 of the Rules of Courts of Equity of the United States and have lodged the same in the Clerk's office on this date, and that solicitors for the defendants, United States of America, the railroad defendants and the intervening defendant, Interstate Commerce Commission, have in writing waived the ten days notice provided for in said rule and have consented to the approval by this Court of the said narrative abstract of evidence, and it further appearing that said narrative statement is true, complete and properly prepared,

It is ordered, that said narrative statement be, and it is hereby approved this 12th day of February, 1934.

Approved

John P. Barnes, District Judge.

[fol. 1610] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO EXHIBITS—Filed Feb. 12, 1934

It is hereby agreed and stipulated, by and between the parties to the above entitled action, through their respective counsel, that, with the approval of the court, the 134 exhibits, consisting of 2,071 pages, received in evidence by the especially constituted district court, and which are a part of the transcript of appeal in the above entitled cause, need not be printed in the record, because of the volume of said exhibits and the expense of printing them, but that each party to said litigation may refer to said exhibits, in brief or in argument, the same as though they had been printed in said record.

The said exhibits were offered and received in evidence at the trial before the Interstate Commerce Commission in the proceedings entitled "Switching Rates in the Chicago Switching District, Docket 19610" and "Acme Steel Company v. Atchison, Topeka & Santa Fe Railway Company, et al., Docket 24950".

Attached to and made a part of this stipulation is a concise statement of the exhibits referred to showing the names of the witnesses, or by whom said exhibits were offered, and a short statement of what each of said exhibits shows.

[fol. 1611] That this stipulation, together with the attached explanation of said exhibits, is to be printed as a part of the printed record.

Illinois Commerce Commission, Public Service Commission (of Indiana), Board of Trade of the City of Chicago, Acme Steel Company, by Luther M. Walter, Their Counsel. United States of America, by Elmer B. Collins, Its Counsel. Alton Railroad Company et al., by J. N. Davis, Their Counsel. Interstate Commerce Commission (Intervener), by Daniel W. Knowlton, Its Counsel.

[fol. 1612]

Chronological List of Exhibits in Chicago Switching Case, I. C. C. Dockets 19610 and 24950

Docket 19610		Number of pages
Exhibit No. 1.	Witness E. F. Saur. Study of Terminal Costs prepared under Provisions of Saur-Coverston Formula for Assignment of Operating Expenses. (Details of station clerical costs.)	19
Exhibit No. 2.	Witness E. F. Saur. Study of Terminal Costs prepared under Provisions of Saur-Coverston Formula for Assignment of Operating Expenses. (Details of engine hour costs.)	55
Exhibit No. 3.	Witness E. F. Saur. Study of Terminal Costs prepared under Provisions of Saur-Coverston Formula for Assignment of Operating Expenses. (Statement showing cost per car per day for Freight Train Train Car Repairs, Depreciation and Retirements, for Individual Trunk Line Roads and Composite for Such Roads, Based on the year 1926.)	1
Exhibit No. 4.	Witness E. F. Saur. Study of Terminal Costs prepared under Provisions of Saur-Coverston Formula for Assignment of Operating Expenses. (Summary of output per engine hour.)	17
Exhibit No. 5.	Witness E. F. Saur. Saur-Coverston Formula for the Assignment of Certain Operating Expenses to Determine the Terminal Costs of Handling Freight Traffic	76
Exhibit No. 6.	Witness E. F. Saur. Map of Chicago Switching District with Cost Study Carriers shown in red, and non-Cost Study Carriers shown in black.	1
Exhibit No. 2-A. (Amendment to Ex. 2)	Witness E. F. Saur. Study of Terminal Costs Prepared under Provisions of Saur-Coverston Formula for Assignment of Operating Expenses. (Amendment to details of engine hour costs, C. B. & Q. Ry., pp. 8 and 9.)	3
Exhibit No. 7.	Witness E. F. Saur. Study of Terminal Costs Prepared under Provisions of Saur-Coverston Formula for Assignment of Operating Expenses. (Average operating costs, 1, 2 and 3-line hauls—excluding traffic moving between Chicago and Chicago Heights Districts.)	5
Exhibit No. 8.	Witness E. F. Saur. Study of Terminal Costs Prepared under Provisions of Saur-Covertson Formula for Assignment of Operating Expenses. (Average operating costs for 2, 3 and 4-line hauls—	

		Number of pages
[fol. 1618]	traffic moving between Chicago and Chicago Heights Districts.)	5
Exhibit No. 9.	Witness G. F. Vivian. Traffic Analysis of Carload Commodities Handled in Switching Service in Chicago Switching District and Between Gary, Chicago Heights and Points within the Chicago Switching District During the Month of September, 1926	9
Exhibit No. 10.	Witness G. F. Vivian. Traffic Analysis of Carload Freight Handled in Chicago Switching District–September, 1926	1
Exhibit No. 11.	Witness G. F. Vivian. Traffic Analysis of Carload Commodities Handled in Switching Service. (Details by commodity groups—1, 2 and 3-line hauls.)	4
Exhibit No. 12.	Witness C. W. Galligan. A letter from Secretary McGinty to C. W. Galligan explaining action of Division 2 in suspending schedules to become effective April 25, 1926, proposing changes in rates on iron and steel articles, carloads, between points in Illinois Freight territory	2
Exhibit No. 13.	Witness G. W. Oliver. Analysis of Switching Service and Cost, Description of Routes, Operating Results of Switching Railroads Operating in the Chicago Switching District	51
Exhibit No. 14.	Witness J. P. Haynes. "Copy of Original Agreement as to rates and territory for the Chicago Switching District dated May 2, 1910."	3
Exhibit No. 15.	Witness J. P. Haynes. Official Map of Chicago District. (Regular switching charge of 2.5 cents for 2-line, and 3 cents for 3-line hauls does not apply to industries shown on red line. Green line—arbitrary of .5 cent in addition to regular switching charges.)	1
Exhibit No. 16.	Witness J. P. Haynes. List of stations and industries located at such stations within the Chicago Switching District excepted from the Application of the Uniform Joint Rates (switching) as published by C. W. Galligan and distance from principal points of interchange, and rates to stations on the C. & N. W. Ry. on moving commodities	13
Exhibit No. 17.	Witness J. P. Haynes. Exhibit in support of the principles of constructing switching rates as advocated by the Chicago Association of Commerce showing: The relationship of rates applicable on ex-lake shipments to rates applicable on ex-rail shipments	11

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		Number of pages.
Exhibit No. 18.	Witness W. J. Hammond. Statement showing range of switching rates between industries within the following switching districts: Buffalo, N. Y., Cincinnati, O., Cleveland, O., Detroit, Mich., Pittsburgh, Pa., St. Louis, Mo.	7
Exhibit No. 19.	Witness R. C. Livingston. Statement of 100 cars shipped by Interstate Iron & Steel Company to customers in the Chicago Switching District showing car detention	5
Exhibit No. 20.	Witness J. T. Forrest. Statement of all carload pig iron shipments made during the year 1926 by the By-Products Coke Corp. (Federal Furnace Plant), located at South Chicago, Ill., on the I. H. B. R. R. and Penna. Co	1
Exhibit No. 21.	Witness J. T. Forrest. Statement of all miscellaneous carload shipments made during the year 1926 by the By-Products Coke Corp. (Federal Furnace Plant), located at South Chicago, Ill., on the I. H. B. R. R. and Penna. Co	1
Exhibit No. 22.	Witness J. T. Forrest. Statement of all carload shipments made during the year 1926 by the By-Products Coke Corp. (Coke Plant), located at South Chicago (So. Deering Station), on the Chicago Short Line Ry	1
Exhibit No. 23.	Witness J. T. Forrest. Carriers' records of movements of certain cars switching in the Chicago District and their analysis of cost of same	8
Exhibit No. 24.	Witness F. E. Webster. C. & E. I. Ry. map showing tracks and industries at Chicago Heights, Ill	1
Exhibit No. 25.	Witness F. E. Webster. Official map of Chicago Switching District with changes since 1911 and suggested changes by C. & E. I. Ry	1
Exhibit No. 26.	Witness F. E. Webster. Letter dated February 11, 1927, "Rates and division between Chicago and Chicago Heights, Ill." addressed to Mr. J. B. Ford, signed by F. E. Webster. This included a call for a meeting of Illinois Freight Asso. on the subject "Rates on all commodities between points within Chicago Switching District, etc."	6
Exhibit No. 27.	Witness F. E. Webster. Letter of H. I. Miller of C. & E. I. R. R. Co. to Chicago Heights Terminal Trans. R. Co.	2

[fol. 1615]

		Number of pages.
Exhibit No. 28.	Witness F. E. Webster. Statement of present and proposed rates on iron and steel articles, carloads, between industries located on the C. H. T. T. R. R. at Chicago Heights, Ill. and industries on the B. & O. CT. R. R., located within the Chicago-Chicago Heights Switching District....	2
Exhibit No. 29.	Witness R. I. Pierce. Excerpt from Chicago Terminal Transfer R. R. Tariff I. C. C. # 13.....	1
Exhibit No. 30.	Witness R. I. Pierce. Chronological history of carload rates between Chicago Heights, Ill. and the Chicago Switching District as compared with the carload rates applying within the Chicago Switching District.....	1
Exhibit No. 31.	Witness R. I. Pierce. Statement of the basis of carload rates now under suspension between Chicago Heights and the Chicago Switching District as compared with rates now under suspension between points in the Chicago Switching District.....	1
Exhibit No. 32.	Witness R. I. Pierce. Statement showing carload traffic moving between Chicago Heights and the Chicago Switching District via B. & O. C. T. and the C. & E. I. from January 1, to December 31, 1927.....	1
Exhibit No. 33.	Witness R. I. Pierce. Statement showing distances from Chicago Heights to all stations on the B. & O. C. T. and C. & E. I. taking carload rate of 2.5 cents per 100 pounds, carload minimum 60,000 pounds.....	1
Exhibit No. 34.	Witness R. I. Pierce. Statement showing list of manufacturers and industries located at Chicago Heights, Ill. who are shippers and receivers of carload freight between Chicago Heights and the Chicago Switching District.....	1
Exhibit No. 35.	Witness R. I. Pierce. Statement showing list of industries in the Chicago Switching District producing articles competitive with similar articles produced in Chicago Heights.....	1
Exhibit No. 36.	Witness E. L. Maynard. Shipments of crushed stone shipped during 1925 from Thornton, McCook and Bellwood, Ill., to points in the Chicago Switching District..	11
[fol. 1616]		
Exhibit No. 37.	Witness E. L. Maynard. Shipments of crushed stone shipped during 1926 from Thornton, McCook and Bellwood, Ill., to points in the Chicago Switching District.	14

		Number of pages.
Exhibit No. 38.	Witness W. J. Womer. Map of lower end of Lake Michigan and surrounding territory, showing a location of principal sand and gravel pits and stone quarries	1
Exhibit No. 39.	Witness W. J. Womer. This exhibit shows local rates via B. & O. C. T. from Thornton and McCook, Ill., to Illinois points and from the same origins to Indiana points	5
Exhibit No. 40.	Witness W. J. Womer. Crushed stone shipments within the Chicago Switching District, (year 1925)	1
Exhibit No. 41.	Witness W. J. Womer. Crushed stone shipments within Chicago Switching District, (year 1926)	1
Exhibit No. 42.	Witness W. J. Womer. Comparison of present and proposed rates on crushed stone, carloads, within the Chicago Switching District.	1
Exhibit No. 43.	Witness W. J. Womer. I. H. B. R. R. present and proposed local and proportional rates on crushed stone, carloads, from McCook, Ill	1
Exhibit No. 44.	Witness W. J. Womer. I. H. B. R. R. present and proposed local and proportional rates on crushed stone, carloads, from McCook, Ill	1
Exhibit No. 45.	Witness W. J. Womer. Freight rates on sand, gravel and crushed stone to Chicago	3
Exhibit No. 46.	Witness W. J. Womer. Miscellaneous commodity rates between Chicago and Joliet, Ill	3
Exhibit No. 47.	Witness W. J. Womer. Miscellaneous commodity rates on C. & N. W. Ry	1
Exhibit No. 48.	Witness W. J. Womer. Miscellaneous commodity rates on C. & N. W. Ry	3
[fol. 1617]		
Exhibit No. 49.	Witness F. B. McElroy. Exhibit of the Whitacer-Greer Fireproofing Co. showing history of hollow building tile rates from Chicago Heights, Ill., Pullman, Ill., and Hobart, Ind., to Chicago Switching District	5
Exhibit No. 50.	Witness H. G. Brown. Statement showing plant and location of Illinois Brick Company yards in the Chicago Switching District; Number of cars handled, tonnage and earnings per car, per car-mile and per ton-mile, on present and proposed basis of rates, together with increases	3

Exhibit No. 51. Witness H. G. Brown.

Statement showing points
nation, distance, number
and revenues
cards of Illinois direct
cago switching District

Exhibit No. 52. Witness H. G. Brown.

Statement showing, points
nation, distance, number
and revenues
cards of Illinois direct
cago switching District

Exhibit No. 53. Witness H. G. Brown.

Statement showing points
nation, distance, number
and revenues
cards of Illinois direct
cago switching District

Exhibit No. 54. Witness H. G. Brown.

Statement showing
Brick Company
reported, in

Exhibit No. 55. Witness J. L. Roberts.

Statement showing
rate (cents per
or per ton revenue
cles from
Company's plant

Exhibit No. 56. Witness J. L. Roberts.

Statement of switching

Exhibit No. 57. Witness J. L. Roberts.

Statement
coal
ment

fol. 1618

Exhibit No. 58. Witness J. [illegible] Brown.

Absorption
grain and grain
Ill., [illegible]
other points

Exhibit No. 59. Witness J. [illegible] Brown.

Absorption
grain and grain products
and other points

Exhibit No. 60. Witness J. [illegible] Brown.

Absorption
grain
Minneapolis

Exhibit No. 61. Witness J. [illegible] Brown.

Absorption
grain and grain
Minneapolis
North Dakota and other

Number of pages

Witness: L. S. Brown:

Extract of testimony of L. S. Coil of the C. M. & St. P. Ry. in I. C. C. Docket No. 15037 at Kansas City, Mo., March 3, 1924 [illegible]

Witness: L. S. Brown:

Supplement No. [illegible] to Terminal R. R. Assn. of St. Louis I. C. C. No. 126, III. I. C. C. No. 22, effective February 1, 1928. See No. [illegible] Rules and Terminal Charges.

Witness: W. Galligan:

Rates on carload traffic between industries in the Chicago Switching District (as described in Agent W. Galligan's Tariff 21-M which are an exception to, or are at variance with the rates applicable generally in the territory).

Introduced by Counsel Luther Walters:

Statement by and on behalf of the Gary Screw & Bolt Company, signed by E. Meek, D. Perry, Pittsburgh, Pa.

Introduced by Counsel Luther Walters:

Statement by and on behalf of the Union Drawn Steel Company of Beaver Falls, Pa., signed by V. W. Hood, Traffic Mgr., Beaver Falls, Pa.

Witness: L. E. Lewis:

Detailed reports of all car movements from the plants of the By-Products Coke Corporation for the period August 1 to 10, 1927, inclusive, the supervision of the Western Indiana Gas & Chemical Corporation at the Gary plant.

Witness: L. C. Perry:

Switching interests, A. T. & S. F. R. R. in Chicago district, on which no protests presented.

Witness: L. C. Perry:

Switching interests, C. C. I. R. R. in Chicago district, on which no protests presented.

Witness: L. C. Perry:

Statement showing the relative importance of Chicago Heights, Ill., as an industrial community.

Witness: L. C. Perry:

Statement showing [illegible] manufacturers located at Chicago Heights, Ill., and one or more industries at Harvey within the Chicago Switching District.

Witness: L. C. Perry:

Map showing the location of industries within the Chicago Switching District producing articles competitive with industries located at Chicago Heights, the line of the R. & O. R. R. and the [illegible] R. R.

		Number of pages
Exhibit No. 73	Witness R. I. Pierce Statement showing list of industries with private or individual sub-tracks located on the B. & O. C. T. R. R. in the Chicago Switching District	
Exhibit No. 74	Witness R. I. Pierce Statement showing list of industries located on the C. A. E. I. and C. A. W. I. in the Chicago Switching District	
Exhibit No. 75	Witness R. I. Pierce Statement showing present and suspended rates between industries located at Chicago Heights in the Chicago Heights Terminal Transfer R. R. and industries or stations located on various lines in the Chicago Sw. District, as compared with present and suspended rates between competitive industries located on various lines in the Chicago Switching District and industries or stations located on connecting lines in the Chicago Switching District (of 1920)	10
Exhibit No. 76	Witness R. I. Pierce Statement showing the revenue per car under the proposed joint line switching rates between points in the Chicago Switching District and between Chicago Heights and points in the Chicago Switching District as compared with the revenue per car on various commodities from and to Chicago	31
Exhibit No. 77	Witness R. I. Pierce Map showing outline of territory where revenue per car from and to Chicago on various Commodities does not exceed $24.00	1
Exhibit No. 78	Witness R. I. Pierce Statement showing the revenue per car on various commodities from and to Chicago	30
Exhibit No. 79	Witness R. I. Pierce Map showing outline of territory where the revenue per car on various commodities from and to Chicago does not exceed $30.00	1
Exhibit No. 80	Witness R. O'Hara Map of Chicago Junction Ry. Co. and the Chicago River & Indiana R. R. Co.	1
Exhibit No. 81	Witness R. O'Hara Chronological statement of intra-district and inter-district switching charges of the Chicago Junction Railway from July 1, 1913 to and including the present date. (The statement shows the charges for loaded and empty movement of railway equipment as well as charges for loaded and empty movement of private equipment.)	1

		Number of pages
Exhibit No. 82	Witness R. O'Hara Statement showing the number of cars switched in inter-district movement by the Chicago Junction Railway for account of Swift & Company and its subsidiaries for the period May, 1927 to and including April, 1928.	1
Exhibit No. 83	Offered by Counsel C. N. Davis Composite exhibit of shippers, carriers, and state commissions relating to the disposition of disputed facts on cost evidence and other matters. (Prepared by joint conference of representatives of carriers, shippers and state commissions.)	191
Exhibit No. 84	Offered by Counsel C. N. Davis Supplement to Exhibit No. 83	33
Exhibit No. 85	Witness C. W. Galligan Statement showing present exceptions to general uniform basis of rates, also changes proposed by carriers under Docket 19610, "General Investigation of Switching Rates in the Chicago District."	98
Exhibit No. 7-A	Witness G. F. Vivian Restatement of Exhibit No. 7 I. C. C. Docket 19610 showing total and average operating costs also present and proposed revenues by rate groups (Lowrey, over and under), further separated between interstate and intrastate traffic, one, two and three-line hauls. (Excluding traffic moving between Chicago and Chicago Heights districts.)	48
Exhibit No. 8-A	Witness G. F. Vivian Restatement of Exhibit No. 8 I. C. C. Docket 19610 showing total and average operating costs, also present and proposed revenues by rate groups (Lowrey, over and under), further separated between interstate and intrastate traffic for two, three and four-line hauls. Traffic moving between Chicago and Chicago Heights Districts.	20
Exhibit No. 11-A	Witness G. F. Vivian Restatement of Exhibit No. 11 I. C. C. Docket 19610 showing analysis of carload commodities handled in switching service. Details by commodity and rate groups further separated between interstate and intrastate traffic. 1, 2 and 3-line hauls. (Excluding traffic moving between Chicago and Chicago Heights Districts.	110
Exhibit No. 11-B	Witness G. F. Vivian Restatement of Exhibit No. 11 I. C. C. Docket 19610 showing analysis of carload commodities handled in switching service. Details by commodity and rate groups 2, 3 and 4-line hauls. (Traffic moving between Chicago and Chicago Heights Districts.)	74

		Number of pages.
Exhibit No. 86	Witness G. W. Renwick Comparison of delivered prices on Chicago District stone with delivered prices on Joliet District gravel at points in the Chicago District	
Exhibit No. 87	Witness J. A. Behrle History of rates on sand and gravel, carload, from Joliet, Ill., to local deliveries on the A. T. & S. F. Ry., C. & A. R. R. and C. R. I. & P. Ry. at Chicago, Ill.	
Exhibit No. 88	Witness J. A. Behrle Analysis of stone producers' alternative proportion Dec. 1922	
Exhibit No. 89	Witness H. S. Brown Switching charges at Council Bluffs, Ia., Omaha, Neb., Kansas City, Mo.-Kan., St. Joseph, Mo., Minneapolis, Minn., Peoria-Pekin, Ill., and St. Louis-East St. Louis District	
Exhibit No. 90	Introduced by Counsel J. N. Davis Study of terminal costs prepared under provisions of Sam Cowerson formula for assignment of operating expenses. (Details of switching costs by element number)	
Exhibit No. 91	Introduced by Counsel J. N. Davis Study of terminal costs prepared under provisions of Sam Cowerson formula for assignment of operating expenses. (Details of switching and clerical costs by index numbers)	
Exhibit No. 92	Witness J. D. Forrest Comparison of interstate and Illinois switching movements of the By-Products Coke Corporation for the year 1926	
Exhibit No. 93	Witness J. D. Forrest Shipments of coke in 1926 to points within the Chicago Switching District taking rates in excess of the basis applicable generally within the District, compared with shipments to other points in the same routes at the regular rate of 60 cents per gross ton	
Exhibit No. 94	Witness J. D. Forrest List of commodities and rates of special interest to the By-Products Coke Corporation, which are an exception to, or are at variance with, the basis applicable generally in the District	
Exhibit No. 95	Witness H. G. Brown Statement of cars switched in Switching District 1926 (Illinois Brick Co.)	
Exhibit No. 96	Witness K. E. Thelin Exhibit relating to car repairs and switching costs. (Prepared by accounting section of Illinois Commerce Commission)	

		Number of pages
Exhibit No. 97	Witness: G. F. Vivian Traffic analyses of carload commodities handled in switching service, showing present and proposed revenue by rate groups (Lowrey over 3rd under), further separated between interstate and intrastate traffic.	
Exhibit No. 98	Witness: F. F. Sour Comparison of cost study: car detention, with car detention officers selected by Illinois Commerce Commission.	
Int. 1023		
Exhibit No. 99	Witness: G. F. Vivian Restatement of Exhibit No. 11 A, I. C. C. Docket 19431 showing revenue discrimination in carload commodities handled in switching service caused by refusal of State Commissions to permit present interstate rates to become effective on intrastate traffic Illinois and Indiana. Details by commodities separated between Intrastate Traffic Illinois and Indiana, 1, 2 and 3-line hauls. Excluding traffic moving between Chicago and Chicago Heights Districts.	
Exhibit No. 99-A Exhibit No. 99 Revised	Witness: G. F. Vivian Restatement of Exhibit No. 11 A, I. C. C. Docket 19431 showing revenue discrimination on carload commodities handled in switching service Illinois and Indiana. Details by commodities separated between intrastate traffic Illinois and Indiana, 1, 2 and 3-line hauls. Excluding traffic moving between Chicago and Chicago Heights Districts.	
Exhibit No. 100	Witness: G. F. Vivian Restatement of Exhibit No. 11 B, I. C. C. Docket 19431 showing revenue discrimination on carload commodities handled in switching service caused by refusal of State Commissions to permit present interstate rates to become effective on intrastate traffic Illinois and Indiana. Details by commodities on intrastate traffic Illinois 2, 3 and 4-line hauls. Traffic moving between Chicago and Chicago Heights Districts.	
Exhibit No. 100-A No. 100 Revised	Witness: G. F. Vivian Restatement of Exhibit No. 11 B, I. C. C. Docket 19431 showing revenue discrimination on carload commodities handled in switching service Illinois and Indiana. Details by commodities on intrastate traffic Illinois, 2, 3 and 4-line hauls. Traffic moving between Chicago and Chicago Heights Districts.	
Exhibit No. 101	Witness: G. F. Vivian Statement for week of November 9 to 15, 1931 inclusive showing revenue discrimination on carload commodities handled in switching service, caused by refusal of State Commis-	

		Number of pages
	sions to permit present interstate rates to become effective on intrastate traffic—Illinois and Indiana. Details by commodities separated between intrastate traffic—Illinois and Indiana, 1, 2, and 3-line hauls. (Excluding traffic moving between Chicago and Chicago Heights Districts.)	33
Exhibit No. 101-A.	Witness G. F. Vivian.	
No. 101 Revised.	Statement for week of November 9 to 15, 1931, inclusive showing alleged revenue discrimination of carload commodities handled in switching service—Illinois and Indiana. Details by commodities separated between intrastate traffic—Illinois and Indiana, 1, 2, and 3-line hauls. (Excluding traffic moving between Chicago and Chicago Heights Districts.)	28
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Exhibit No. 102.	Witness G. F. Vivian.	
	Statement for week of November 9 to 15, 1931, inclusive, showing revenue discrimination of carload commodities handled in switching service, caused by refusal of State Commissions to permit present interstate rates to become effective on intrastate traffic—Illinois. Details by commodities in intrastate traffic—Illinois, 2, 3, and 4-line hauls. (Traffic moving between Chicago and Chicago Heights.)	18
Exhibit No. 103.	Witness G. F. Vivian.	
	Statement for week of January 11 to 17, 1932, inclusive, showing revenue discrimination of carload commodities handled in switching service, caused by refusal of State Commissions to permit present interstate rates to become effective on intrastate traffic—Illinois and Indiana. Details by commodities separated between intrastate traffic—Illinois and Indiana, 1, 2 and 3-line hauls. (Excluding traffic between Chicago and Chicago Heights Districts.)	34
Exhibit No. 103-A.	Witness G. F. Vivian.	
No. 103 Revised	Statement for week of January 11 to 17, 1932, inclusive, showing alleged revenue discrimination of carload commodities handled in switching service—Illinois and Indiana. Details by commodities separated between intrastate traffic—Illinois and Indiana, 1, 2, and 3-line hauls. (Excluding traffic between Chicago and Chicago Heights Districts.)	28
Exhibit No. 104.	Witness G. F. Vivian.	
	Statement for week of January 11 to 17, 1932, inclusive, showing revenue discrimination of carload commodities handled in switching service, caused by refusal of State Commission to permit present interstate rates to become effective on intrastate traffic—Illinois. Details by commodities in intrastate	

		Number of pages
	traffic—Illinois, 2, 3 and 4-line hauls. (Traffic moving between Chicago and Chicago Heights Districts.)	18
Exhibit No. 105.	Witness G. F. Vivian. Statement for test period weeks November 9 to 15, 1931, inclusive, and January 11 to 17, 1932, inclusive, showing blockading of interstate traffic due to refusal of State Commissions to permit present interstate rates to become effective on intrastate traffic—Illinois and Indiana. Details by commodities for interstate traffic, 1, 2, and 3-line hauls. (Excluding traffic moving between Chicago and Chicago Heights Districts.)	35
Exhibit No. 105-A. No. 105 Revised	Witness G. F. Vivian. Statement for test period weeks November 9 to 15, 1931, inclusive, and January 11 to 17, 1932, inclusive, showing blockading of interstate traffic. Details by commodities for interstate traffic, 1, 2, and 3-line hauls. (Excluding traffic moving between Chicago and Chicago Heights Districts.)	30
[fol. 1625]		
Exhibit No. 106.	Witness G. F. Vivian. Statements for test period weeks, November 9 to 15, 1931, inclusive, and January 11 to 17, 1932, inclusive, showing blockading of interstate traffic due to refusal of State Commission to permit present interstate rates to become effective on intrastate traffic—Illinois. Details by commodities for interstate traffic, 2, 3 and 4-line hauls. (Traffic moving between Chicago and Chicago Heights Districts.)	35
Exhibit No. 107.	Witness G. F. Vivian. Selected data of operating expenses, operating ratio, taxes, cars handled and appropriate averages, by years, for the period 1928 to 1931, both inclusive, for eight switching carriers of the Chicago District	10
Exhibit No. 108.	Witness G. F. Vivian. Selected data of operating expenses, operating ratio, taxes, cars handled and appropriate averages, by years, for the period 1928 to 1931, both inclusive, for seven trunk-line railroads entering Chicago District	9
Exhibit No. 109.	Witness G. F. Vivian. Railway operating revenues, expenses, net operating income, rate of return and operating ratio by Districts and the United States, for the years 1928, 1929, 1930 and 1931, Class I Railways—including large switching and terminal carriers	2
Exhibit No. 110.	Witness G. F. Vivian. Illustrations of carload movements within the Chicago District routed by industries to	

		Number of pages
	avoid interstate rates during period December 10, 1931, to March 31, 1932, both inclusive—1, 2, and 3-line hauls	19
Exhibit No. 110-A.	Witness G. F. Vivian. List of industries as coded on circuitous routing maps.—Supplement to Exhibit No. 110	3
Exhibit No. 111.	Witness G. F. Vivian. Form CSC-100. (Form for making report for traffic test.)	1
Exhibit No. 112.	Witness J. W. Brown. Map of Grasselli Chemical Company's tracks at Grasselli, Ind	1
Exhibit No. 113.	Witness J. W. Brown. Statement showing shipments of acid in tank cars from Grasselli, Ind., to points in Indiana in the Chicago Switching District; the freight rates paid and the revenue derived therefrom for the year 1930	1
[fol. 1626]		
Exhibit No. 114.	Witness J. W. Brown. Destinations in the Chicago Switching District to which Grasselli Chemical Company ships acid in tank cars from Grasselli, Ind	1
Exhibit No. 115.	Witness J. W. Brown. Connections of the I. H. B. Ry. via which tank carloads of sulphuric acid are shipped from Grasselli, Ind	1
Exhibit No. 116.	Witness J. W. Brown. Record of cost of operation of the American Tank Line, owned and operated by the Grasselli Chemical Company, during the year 1930	1
Exhibit No. 117.	Witness J. W. Brown. Statement showing regularity of movement of tank carloads of acid from Grasselli, Ind., to points in Indiana in the Chicago Switching District	1
Exhibit No. 118.	Witness J. W. Brown. Statement of prices on sulphuric acid in tank cars in the Chicago District	1
Exhibit No. 119.	Witness J. E. Pierce. Map (South Chicago Coal & Dock Co.) of Chicago Switching District showing locations to which eastern bituminous coal was delivered with tonnages, year 1931	1
Exhibit No. 120.	Witness R. W. Fletcher. Analysis of switching service and costs, and operating results of switching railroads serving the Chicago Switching District. (Note—Examiners directed pages 1-28, both inclusive, and direct and cross examination in connection therewith, in 19610 Rec. page	

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	3057, be transferred physically to Record in 24950. No other exhibit number was assigned to the part transferred, however.)	34
Docket 24950		
Exhibit No. 1.	Witness F. S Holland.	
	Standard Oil Company map of Chicago and vicinity	1
Exhibit No. 2.	Witness G. H. Staat.	
	Shipments by Interlake Iron Corporation of coke, pig iron, sulphate of ammonia, ammoniacal liquor, tar and light oil, in tons. (Sept., 1926 Sept. 1931 and March 1932.)	1
Exhibit No. 3.	Witness R. I. Pierce.	
	Statement showing revenue per car under the Interstate switching rates in the Chicago District as compared with car revenue under various road-haul rates	11
	Total Number of Exhibits (19610 and 24950)	134
	Total Number of Pages of all exhibits	2,071

[fols. 1627 & 1628] [File endorsement omitted.]

[fol. 1629] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER AS TO EXHIBITS—Feb. 12, 1934

In accordance with the provisions of plaintiffs' præcipe for transcript of record on appeal of the above entitled matter to the Supreme Court of the United States, and it appearing that the parties have consented thereto,

It is hereby ordered, That the certified copies of Exhibits numbered 1 to 120, inclusive, which were attached to the certified record of the evidence and proceedings before the Interstate Commerce Commission in the matter entitled, "Switching Rates in the Chicago Switching District", Docket No. 19610, and the certified copies of Exhibits numbered 1 to 3, inclusive, attached to the certified record of the evidence and proceedings before the Interstate Commerce Commission in the matter entitled, "Acme Steel Company, et al, v. The Atchison, Topeka and Santa Fe Railway Company, et al.", Docket No. 24950, which were offered in evidence in the above entitled matter and filed in the office of the Clerk of the above entitled court on November 7, 1933, may be forwarded to the Clerk of the United States Su-

preme Court as a part of the transcript of the record on appeal herein.

Dated this 12th day of February, 1934.

—— ——, United States Circuit Judge. —— ——, United States District Judge. John P. Barnes, United States District Judge.

[fol. 1630] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Jan. 23, 1934

To the clerk of the above entitled court:

Please prepare a transcript of the record in the above entitled cause in the matter of the appeal therein and include in said transcript, in the order given below, the following matter, viz:

1. Bill of Complaint filed by plaintiffs October 5, 1933.

2. Answer of United States of America, filed October 13, 1933.

3. Intervention of Interstate Commerce Commission filed October 13, 1933.

4. Answer of Interstate Commerce Commission, filed October 13, 1933.

5. Answer of Carrier Defendants, filed October 13, 1933.

6. Narrative Abstract of Transcript of Record of the Evidence and proceedings before the Interstate Commerce Commission in the matter entitled "Switching Rates in the Chicago Switching District", Docket No. 19610, and the certified copies of exhibits numbered 1 to 120, inclusive, therein; and Acme Steel Company, et al. v. The Atchison, Topeka and Santa Fe Railway Company, et al., Docket No. 24950, and the certified copies of Exhibits numbered 1 to 3, inclusive, therein. (Exhibits are to be forwarded in original form and are not abstracted.)

7. Findings of Fact and Conclusions of Law of this Court, dated and entered November 3, 1933.

[fol. 1631] 8. Order of Court Denying Injunction and Dismissing Bill of Complaint, dated November 8, 1933.

9. Notice of and Motion for Stay of Order of the Interstate Commerce Commission, dated July 3, 1933, Pending Appeal to the Supreme Court.

10. Exhibits numbered 1, 2 and 3 offered at hearing on plaintiff's Motion for Stay of Order, on November 13, 1933.

11. Order of Court dated November 15, 1933, Denying Motion for Stay of Order of the Interstate Commerce Commission dated July 3, 1933, Pending Appeal to the Supreme Court and Requiring Defendant Carriers to Preserve and Account for all Amounts Derived by them By Virtue of Said Order of the Interstate Commerce Commission.

12. Petition for Appeal filed by plaintiffs on November 16, 1933.

13. Order of the above entitled Court granting appeal, dated November 16, 1933.

14. Assignment of Errors filed by plaintiffs on November 16, 1933.

15. Jurisdictional Statement, filed in accordance with Rule 12 of the Supreme Court, November 16, 1933.

16. Bond on Appeal approved November 21, 1933, filed November 22, 1933.

17. Citation on appeal, filed November 25, 1933.

18. Order for withdrawal of transcript of testimony before the Interstate Commerce Commission for purpose of making abstract thereof in accordance with the rules of the Supreme Court, dated November 21, 1933.

19. Order of the Court modifying order dated November 15, 1933, Denying Motion for Stay of Order of the Interstate Commerce Commission, dated July 3, 1933 by requiring the filing of a bond pending appeal by C. M. Thomson as Trustee for the Chicago and Eastern Illinois Railway Company and The Chicago Rock Island and Pacific Railway Company, dated November 28, 1933.

20. Order Enlarging Time Within Which to Docket Case and File a Record Thereof, dated and entered November 28, 1933.

21. Order Further Enlarging Time Within Which to Docket Case and File a Record Thereof, dated and entered December 27, 1933.

[fol. 1632] 22. This Præcipe for Transcript of Record filed January —, 1934.

23. All acknowledgments of receipt of copies of Petition for Appeal, Assignments of Error, Order Granting Appeal,

Citation on Appeal.
Præcipe for Transcript of Record.

3. Waiver of Notice under Rule 75 and Consent to Approval of Narrative Statement

3. Order Approving Narrative Abstract of Transcript of Record

4. Stipulation Providing that the Exhibits Need Not Be Printed in the Record

5. Order Allowing Withdrawal of Exhibits

6. This Supplemental Praecipe

Otto Kerner, Attorney General of Illinois, Irvin Rooks, Harry R. Booth, Assistant Attorneys General of Illinois, Solicitors for Illinois Commerce Commission. Philip Lutz, Jr., Attorney General of Indiana, Herbert J. Patrick, Deputy Attorney General of Indiana, Solicitors for Public Service Commission (of Indiana). Herbert J. Campbell, [fol 1637] Solicitor for Board of Trade of the City of Chicago. Luther M. Walter, Solicitor for Acme Steel Company.

Acknowledgment of Service

Service is hereby acknowledged of the within praecipe for Transcript of Record. No additional portions of the Record are desired to be incorporated into the Transcript.

Dated this 12 day of February, 1934.

Solicitor for United States of America.

Solicitor for Interstate Commerce Commission. J. N. Davis, Solicitor for Railroad Defendants.

[The endorsement omitted.]

[fol 1638] Clerk's Certificate to foregoing transcript omitted in printing.

[fol 1639] Supreme Court of the United States

Statement of Points to be Relied Upon and Designation as to Printing Record. Filed Feb. 15, 1934

Now come the appellants, in the above entitled cause and for their statement of points to be relied upon adopt their

assignments of error. Further complying with Paragraph 9 of Rule 13, appellants state that the entire record as certified by the Clerk of the United States District Court for the Northern District of Illinois, except the exhibits to the oral testimony taken before the Interstate Commerce Commission which are to be omitted from the printing of the record as per stipulation of counsel, is necessary for a full and fair consideration of the case.

Luther M. Walter, Counsel for Appellants.

Service of the above is acknowledged this 15th day of February, 1934.

Elmer B. Collins, for United States. J. N. Davis, for Railroads Defendants. Daniel W. Knowlton, for Interstate Commerce Commission.

[fol. 1640] [File endorsement omitted.]

Endorsed on cover: File No. 38,390. N. Illinois, D. C. U. S. Term No. 787. Illinois Commerce Commission, Public Service Commission (of Indiana), Board of Trade of the City of Chicago, and Acme Steel Company, Appellants, vs. The United States of America, The Alton Railroad Company, The Atchison, Topeka and Santa Fe Railway Company. Filed February 14, 1934. File No. 787, O. T., 1933.